

X Corp. Exhibit L

In The Matter Of:
Alexander E. Jones, Debtor

*Christopher Murray
December 5, 2024*

*CONTINENTAL COURT REPORTERS, INC.-Houston
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1	IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION	1 APPEARANCES 2
3	IN RE:) 4 ALEXANDER E. JONES) CHAPTER 11 5 Debtor) CASE NO. 22-33553	3 FOR ALEXANDER JONES: 4 Mr. Shelby A. Jordan (via Zoom) 5 JORDAN & ORTIZ, P.C. 5 500 N. Shoreline Boulevard, Suite 804 6 Corpus Christi, Texas 78401 6 Telephone: 361.884.5678 7 E-mail: sjordan@jhwclaw.com
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7	ORAL VIDEOTAPED DEPOSITION OF 8 CHRISTOPHER MURRAY 9 DECEMBER 5, 2024	15 FOR CONNECTICUT PLAINTIFFS: 16 Mr. Paul A. Paterson (via Zoom) 17 Mr. Kyle Kimpler (via Zoom) 17 Ms. Vida Robinson (via Zoom) 18 PAUL, WEISS, RIFKIND, WHARTON & GARRISON 18 1285 Avenue Of The Americas 19 New York, New York 10019 19 Telephone: 212.373.3000 20 E-mail: ppaterson@paulweiss.com 20 kkimpler@paulweiss.com 21 virobinson@paulweiss.com
10		22 Mr. Ryan Chapple (via Zoom) 23 CAIN & SKARNULIS, PLLC 23 303 Colorado Street, Suite 2850 24 Austin, Texas 78701 24 (512) 477-5000 25 rchapple@cstrial.com
11	ORAL VIDEOTAPED DEPOSITION OF CHRISTOPHER MURRAY, 12 produced as a witness at the instance of First United 13 American Companies, LLC and duly sworn, was taken in the 14 above-styled and numbered cause on the 5th day of 15 December, 2024, from 9:42 a.m. to 5:40 p.m., before 16 Melinda Barre, Certified Shorthand Reporter in and for 17 the State of Texas, reported by computerized stenotype 18 machine at the offices of Porter Hedges, 1000 Main 19 Street, 36th Floor, Houston, Harris County, Texas, 20 pursuant to the Bankruptcy Rules of Procedure and the 21 provisions stated on the record or attached hereto.	25
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1	APPEARANCES	1 APPEARANCES
2		2
3	FOR CHAPTER 7 TRUSTEE CHRISTOPHER MURRAY: 4 Mr. Joshua Wolfshohl 5 Ms. Kenesha L. Starling (via Zoom) 5 Mr. Michael B. Dearman (via Zoom) 5 PORTER HEDGES LLP 6 1000 Main Street, 36th Floor 6 Houston, Texas 77002 7 Telephone: 713.226.6000 8 E-mail: jwolfshohl@porterhedges.com 8 kstarling@porterhedges.com 9 mdearman@porterhedges.com	3 FOR TEXAS PLAINTIFFS: 4 Ms. Deanna Drenga (via Zoom) 4 Mr. Niko Letsos (via Zoom) 5 WILLKIE FARR & GALLAGHER LLP 5 787 Seventh Avenue 6 New York, New York 10019 6 Telephone: 212.728.8000 7 E-mail: ddrenga@willkie.com 7 nletsos@willkie.com
10	FOR FIRST UNITED AMERICAN COMPANIES, LLC: 11 Mr. Walter J. Cicack 11 HAWASH CICACK & GASTON LLP 12 711 West Alabama Street, Suite 200 12 Houston, Texas 77006 13 Telephone: 713.658.9015 13 E-mail: wcicack@hcglp.com	8 ALSO PRESENT: Russell McKean and Robert Pierce, 9 Videographers
14		10 Paula Brillson, General Counsel of 10 The Onion
15	FOR THE U.S. TRUSTEE: 16 Mr. Ha Nguyen 16 UNITED STATES DEPARTMENT OF JUSTICE 17 515 Rusk Street, Suite 3516 17 Houston, Texas 77002 18 Telephone: (202) 590-7962 18 E-mail: ha.nguyen@usdoj.gov	11 Chrystal Karstedt (via Zoom) 11 Legal Assistant for Shelby Jordan 12 Jordan & Ortiz, P.C.
19		13 Natalie Faust, Zoom Host
20	FOR ALEXANDER JONES: 21 Mr. Ben C. Broocks 21 BROOCKS LAW FIRM, P.L.L.C. 22 248 Addie Roy Road, Suite B-301 22 Austin, Texas 78746 23 Telephone: 512.201.2000 23 E-mail: bbroocks@broocks lawfirm.com	14
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23	Exhibit 5 11-11-24 Email from Jeff Tanenbaum to Melissa Allen; Subject, Notice re. FSS Overbid Process	80	23		
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1	EXHIBITS (cont.)	PAGE	1	THE VIDEOGRAPHER:	This is the video
2 EXHIBIT	DESCRIPTION		2	recorded deposition of Christopher Murray. Today's date	
3			3	is December 5th, 2024. The time is 9:42 a.m. Central	
4			4	Time, and we are now on the record.	
5			5	Can I get all attorneys present to please	
6			6	identify yourselves and who you represent for the	
7			7	record.	
8			8	MR. CICACK:	Yes. This is Walter Cicack,
9			9	spelled C-i-c-a-c-k. I represent First United American	
10			10	Companies, LLC.	
11			11	MR. BROOCKS:	My name is Ben Broocks, and
12			12	I represent Alex Jones.	
13			13	MR. NGUYEN:	Good morning. My name is
14			14	Ha Nguyen. I represent the United States Trustee.	
15	Plf Exhibit 1 Trustee's Motion for Entry of an Order Authorizing the Wind-Down of Free Speech Systems, LLC	258	15	MR. WOLFSHOHL:	Joshua Wolfshohl with
16			16	Porter Hedges; and I represent the Chapter 7 trustee,	
17			17	Chris Murray.	
18	Plf Exhibit 2 Order Granting Trustee's Motion for Entry of an Order Authorizing the Winddown of Free Speech Systems, LLC	258	18	THE VIDEOGRAPHER:	And can I get the
19			19	attorneys present by Zoom to please identify yourselves	
20	Plf Exhibit 3 Trustee's Motion for Authority to Sell the Intellectual Property Assets	263	20	21	and who you represent.
21			21	MR. JORDAN:	Shelby Jordan. I represent
22	Plf Exhibit 4 Notice of Revised Proposed Order Granting Trustee's Emergency Motion for Entry of an Order Authorizing (I) the Sale of Assets in Connection with the Winddown of Free	267	22	Alex Jones.	
23			23	MS. RECKLER:	Good morning, Caroline
24			24	Reckler. I represent X Corp.	
25			25	MR. PATERSON:	Good morning. Paul

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<p>1 Paterson from Paul Weiss for the Connecticut plaintiffs, 2 together with Vida Robinson from Paul Weiss.</p> <p>3 MS. DRENGA: This is Deanna Drenga from 4 Willkie Farr & Gallagher on behalf of the Texas 5 plaintiffs, also with my colleague Niko Letsos.</p> <p>6 MR. CHAPPLE: Good morning. Ryan Chapple 7 for the Connecticut plaintiffs.</p> <p>8 MR. MATTEI: Good morning. Chris Mattei 9 on behalf of the Connecticut plaintiffs.</p> <p>10 THE VIDEOGRAPHER: All right. Would the 11 court reporter please swear in the witness.</p> <p>12 CHRISTOPHER MURRAY, 13 having been first duly sworn, testified as follows:</p> <p>14 EXAMINATION</p> <p>15 QUESTIONS BY MR. CICACK:</p> <p>16 Q. Please state your name, please.</p> <p>17 A. Christopher Murray.</p> <p>18 Q. Okay. Mr. Murray, what is your relationship to 19 the Alex Jones bankruptcy?</p> <p>20 A. I'm the Chapter 7 trustee.</p> <p>21 Q. Okay. And you're here today to give your 22 deposition in connection with the motion that you filed 23 for entry of an order in furtherance of the sale of the 24 assets of Free Speech Systems?</p> <p>25 A. Yes.</p>		<p>1 Q. Dozens. Okay. And how many times have those 2 situations included an auction?</p> <p>3 A. Probably at least a dozen, maybe two dozen.</p> <p>4 Q. Okay. In terms of the complexities involved, 5 how does the auction that occurred here in connection 6 with the Alex Jones matter compare to the other auctions 7 that you've handled?</p> <p>8 A. I'd say it's on the more complex side.</p> <p>9 Q. Have you ever handled a situation where the 10 auction was actually done at the courthouse before the 11 judge?</p> <p>12 A. Yes.</p> <p>13 Q. How many times has that happened approximately?</p> <p>14 A. Oh, a handful. Maybe three or four.</p> <p>15 Q. Okay. And I assume you've also handled 363 16 sales as a trustee, where you asked the Court to approve 17 a sale that didn't include an auction?</p> <p>18 A. Yes.</p> <p>19 (Murray Exhibit 9 was marked for identification.)</p> <p>20 BY MR. CICACK:</p> <p>21 Q. All right. Let me ask you to look at what has 22 been previously marked as Exhibit 9.</p> <p>24 A. Okay.</p> <p>25 MR. WOLFSHOHL: The offering memorandum?</p>	
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<p>1 Q. Okay. And you understand there's a hearing set 2 for 1:00 p.m. on Monday, December 9th for the judge to 3 consider that motion?</p> <p>4 A. Yes.</p> <p>5 Q. Let me ask you just a little bit about your 6 background.</p> <p>7 Approximately how many cases have you 8 handled as a Chapter 7 trustee?</p> <p>9 A. Several hundred.</p> <p>10 Q. Okay. And have you handled any cases as a 11 Chapter 11 trustee?</p> <p>12 A. Yes.</p> <p>13 Q. How many approximately?</p> <p>14 A. Oh, a handful. Maybe four or five.</p> <p>15 Q. Okay. Do you also have what I would consider 16 to be a more traditional background practice -- I mean, 17 bankruptcy practice as well?</p> <p>18 A. Yes.</p> <p>19 Q. And represent creditors and debtors both?</p> <p>20 A. Usually debtors and trustees, occasionally creditors.</p> <p>22 Q. Okay. Now, as a trustee in either a Chapter 11 23 or Chapter 7, how many times have you been involved in 24 selling assets through Bankruptcy Code 363?</p> <p>25 A. Oh, dozens.</p>		<p>1 MR. CICACK: Yeah.</p> <p>2 BY MR. CICACK:</p> <p>3 Q. Now, is this the bid package that was sent out 4 in connection with the auction of the Free Speech 5 Systems assets?</p> <p>6 A. Yes. This is the initial bid package.</p> <p>7 Q. And how many potential bidders received this 8 package?</p> <p>9 A. I don't know. I think around a dozen.</p> <p>10 Q. Did you keep track of who received the package?</p> <p>11 A. Personally, no.</p> <p>12 Q. Okay. Was somebody responsible for keeping 13 track of who received the bid package?</p> <p>14 A. Yeah, my auctioneer.</p> <p>15 Q. And who was that?</p> <p>16 A. Jeff Tanenbaum.</p> <p>17 Q. And who prepared the bid package?</p> <p>18 A. The auctioneer. And also, I participated in it and so did my counsel.</p> <p>20 Q. And who is your counsel?</p> <p>21 A. Mr. Wolfshohl here, other members of his firm, also Erin Jones.</p> <p>23 Q. Okay. So it was a collaborative product?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And did you give final approval to the</p>	

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<p>1 language that is in Exhibit 9?</p> <p>2 A. Yes.</p> <p>3 Q. So did you give it a final review and approval</p> <p>4 before it was provided to potential bidders?</p> <p>5 A. Yes. I read it and approved it.</p> <p>6 Q. Okay. It doesn't include what I think we call</p> <p>7 lot 4.</p> <p>8 Do you recall when lot 4 was added?</p> <p>9 A. I'm not sure what you're talking about.</p> <p>10 Q. Okay. Let's go look at the pages here. If you</p> <p>11 go to like page -- the pages are on the top. You see</p> <p>12 starting at page 5 it says lot 1?</p> <p>13 A. Okay. I see that.</p> <p>14 Q. And I'm sorry. You're looking at the wrong</p> <p>15 page.</p> <p>16 A. I'm sorry. You want me on 5?</p> <p>17 Q. Yeah. No. Actually, page -- yeah, page 5 on</p> <p>18 top. See where it says lot 1 and the next page says</p> <p>19 lot 2?</p> <p>20 A. Yes.</p> <p>21 Q. And the next page says lot 3, right?</p> <p>22 A. I see that.</p> <p>23 Q. Those were the assets that were being sold,</p> <p>24 correct?</p> <p>25 A. Yes.</p>		<p>1 A. I don't know.</p> <p>2 Q. And when you say you agreed to include them as</p> <p>3 disputed, who was the agreement with?</p> <p>4 A. Mr. Jones requested it.</p> <p>5 Q. Okay. So it was an agreement with Mr. Jones?</p> <p>6 A. His counsel at the time.</p> <p>7 Q. And who was that?</p> <p>8 A. Ms. Driver and -- I can't remember her last</p> <p>9 name, but there was an IP lawyer as well.</p> <p>10 Q. All right. Let me ask you -- going back to</p> <p>11 Exhibit 9, let me ask you to look at page 4. And when</p> <p>12 I'm talking about the pages, I'm talking about the</p> <p>13 page numbers on the top right.</p> <p>14 A. Okay.</p> <p>15 Q. Page 4. So you see where it says "bid form,"</p> <p>16 and then there's Nos. 1, 2 and 3?</p> <p>17 A. I see that.</p> <p>18 Q. Okay. No. 3 says, "Bids must be accompanied by</p> <p>19 a 10 percent deposit payable to the trustee, along with</p> <p>20 proof of financial ability to close."</p> <p>21 Did I read that correctly?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Did you waive the deposit requirement</p> <p>24 for any of the bidders?</p> <p>25 A. No.</p>	
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<p>1 Q. At some point in time there was a lot 4 that</p> <p>2 included assets that were also included in the sale?</p> <p>3 A. I believe so, yes.</p> <p>4 Q. Okay. And I just want to know, do you recall</p> <p>5 when that was added?</p> <p>6 A. No.</p> <p>7 Q. And do you recall generally what the lot 4</p> <p>8 assets were?</p> <p>9 A. Are you talking about the disputed domain</p> <p>10 names?</p> <p>11 Q. I believe so.</p> <p>12 A. Okay. That's my understanding.</p> <p>13 Q. Okay. And what do you understand about those</p> <p>14 assets?</p> <p>15 A. That among the domain names that FSS had to</p> <p>16 sell, Mr. Jones was asserting -- I think he called it a</p> <p>17 liberty interest, in those domain names, suggesting that</p> <p>18 either the estate didn't own them or that they couldn't</p> <p>19 be sold.</p> <p>20 We agreed to designate those as disputed</p> <p>21 domain names so that bidders would know that if they</p> <p>22 were going to acquire those domain names, there might be</p> <p>23 a fight later on.</p> <p>24 Q. Why were they not included in the original bid</p> <p>25 package?</p>		<p>1 Q. And we'll get into more detail about this, but</p> <p>2 as I understand it, there were only two bidders.</p> <p>3 A. Ultimately we only received two bids, yes.</p> <p>4 Q. All right. So there was only two formal bids</p> <p>5 received?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And one was from First United, right?</p> <p>8 A. Yes.</p> <p>9 Q. If I just call it First United, you'll know</p> <p>10 that we're talking about my client, First United</p> <p>11 American Companies, LLC?</p> <p>12 A. Yes. Your client, yes.</p> <p>13 Q. All right. And tell me, how are you</p> <p>14 comfortable referring to the other bidders, just so I</p> <p>15 can use the terminology that we'll both know we're</p> <p>16 talking about them?</p> <p>17 A. That's a good question because it's a lot of</p> <p>18 words.</p> <p>19 Q. Can we just agree, maybe we'll just call them</p> <p>20 the joint bidders?</p> <p>21 A. That's fine. Or the successful bidders.</p> <p>22 Q. Okay. I don't like that term. I like the</p> <p>23 joint bidders better. But I get you.</p> <p>24 All right. So other than the joint</p> <p>25 bidders and the bids submitted by First United, there</p>	

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<p>1 were no other formal bids that were submitted?</p> <p>2 A. No.</p> <p>3 Q. Okay. And we'll get into this more later but I</p> <p>4 just -- there were other people who at least showed</p> <p>5 interest at some point in time, right?</p> <p>6 A. Yes.</p> <p>7 Q. Where it says here that each bid must be</p> <p>8 accompanied with proof of financial ability to close,</p> <p>9 were -- both of the bids submitted, did they show</p> <p>10 financial ability to close?</p> <p>11 A. Yes.</p> <p>12 Q. So that requirement wasn't waived?</p> <p>13 A. No.</p> <p>14 Q. Now, you also reserve -- if you go down to the</p> <p>15 next, where it says "terms" and it says "terms</p> <p>16 highlights," do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. The first sentence there says, "The trustee</p> <p>19 reserves the right to accept or reject any offer."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Did you reject any offers?</p> <p>23 A. No.</p> <p>24 Q. All right. Let's go down a little bit further</p> <p>25 down to the bullet point down towards the end, where it</p>		<p>1 A. That's what it says, yeah.</p> <p>2 Q. Well, is that accurate?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Let's go back to the top of the -- where</p> <p>5 it says "Terms." The first sentence we looked at,</p> <p>6 "Trustee reserves the right to accept or reject any</p> <p>7 offer," the second sentence there says, "In the event an</p> <p>8 offer is accepted, it shall be subject to overbid and</p> <p>9 U.S. bankruptcy court approval."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Okay. Now, there were two qualified bidders.</p> <p>13 Is that right?</p> <p>14 A. Yes.</p> <p>15 Q. All right. And were either of those qualified</p> <p>16 bids subjected to an overbid?</p> <p>17 A. They both were.</p> <p>18 Q. Okay. The accepted bid by First United was for</p> <p>19 \$3.5 million. Is that right?</p> <p>20 A. I want to make sure we're talking about the</p> <p>21 same thing because we were talking about qualified bids</p> <p>22 and now we're talking about accepted bids. There were</p> <p>23 two rounds of bids.</p> <p>24 Q. Right. So when you say, "In the event an offer</p> <p>25 is accepted, it shall be subject to an overbid," you're</p>	
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<p>1 says, "Bids shall be in U.S. dollars on a cash basis and</p> <p>2 shall be irrevocable and noncontingent."</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. When it says the "bids shall be in U.S. dollars</p> <p>6 on a cash basis," what does that mean?</p> <p>7 A. That means that people should bid an amount of</p> <p>8 dollars for the assets they're bidding on.</p> <p>9 Q. What does it mean when it says cash basis?</p> <p>10 A. That it's not a loan or something else but that</p> <p>11 it's cash that would be paid.</p> <p>12 Q. The next bullet point says, "Deposits and</p> <p>13 payments are due in the form of wire transfer only."</p> <p>14 A. I see that.</p> <p>15 Q. So there were two deposits that were made,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Were they made by wire transfer only?</p> <p>19 A. They were.</p> <p>20 Q. Then where it says "Payments," what does that</p> <p>21 refer to?</p> <p>22 A. I understand that to refer to payment of the</p> <p>23 purchase price later.</p> <p>24 Q. Okay. So the payment of the purchase price can</p> <p>25 only be made via wire transfer?</p>		<p>1 talking about the qualified bids?</p> <p>2 A. Here, I believe that is what that is referring</p> <p>3 to, yes.</p> <p>4 Q. And so each of the qualified bids was subject</p> <p>5 to an overbid?</p> <p>6 A. Under this term, yes.</p> <p>7 Q. What does that mean, "under this term"?</p> <p>8 A. Well, you're asking me about the terms that are</p> <p>9 on the page, and I'm trying to answer your questions.</p> <p>10 Q. Okay. Well, let's just take First United, for</p> <p>11 instance. First United made -- its original qualified</p> <p>12 bid was for \$1.2 million, correct?</p> <p>13 A. I think that's right.</p> <p>14 Q. Okay. And how was that bid subjected to an</p> <p>15 overbid?</p> <p>16 A. So the way the procedures worked, we took</p> <p>17 qualified bids, and at my election we could have a live</p> <p>18 auction or some other auction format at my discretion.</p> <p>19 So there would be anticipated another opportunity to bid</p> <p>20 after those initial bids.</p> <p>21 Q. Okay. Well, you only had one other qualified</p> <p>22 bidder, right, which was the joint bidders?</p> <p>23 A. Yes.</p> <p>24 Q. How did they know what to overbid? How did</p> <p>25 they know what the bid was that they had to overbid?</p>	

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<p>1 A. They didn't.</p> <p>2 Q. They didn't. Okay. So in order to be able to</p> <p>3 overbid, don't you have to know the bid that you're</p> <p>4 competing against?</p> <p>5 A. I don't think so.</p> <p>6 Q. Why not?</p> <p>7 A. What we announced was a second sealed bid</p> <p>8 round, where we asked for highest and best offers. The</p> <p>9 point of doing it that way is to encourage bidders to</p> <p>10 bid as much as they're willing to bid to get top dollar</p> <p>11 from each bidder.</p> <p>12 That would be undermined if the bidders</p> <p>13 knew each other's bids.</p> <p>14 Q. Okay. Then why wasn't that disclosed in the</p> <p>15 offering memorandum, that you were not going to subject</p> <p>16 qualified bids to an overbid?</p> <p>17 A. Well, the offering memorandum is the initial</p> <p>18 bid procedures that are subject to my discretion to</p> <p>19 changes, to further amendment as announced throughout</p> <p>20 the process.</p> <p>21 Q. As announced at the auction, correct?</p> <p>22 A. Throughout the process.</p> <p>23 Q. We'll get to that in a minute.</p> <p>24 All right. So it's your testimony that</p> <p>25 the original qualified bids were subjected to an overbid</p>		<p>1 highest and best process basically?</p> <p>2 A. Yes.</p> <p>3 Q. All right. Was that a determination that you</p> <p>4 made on your own?</p> <p>5 A. No.</p> <p>6 Q. And did you seek input from, for instance, your</p> <p>7 auctioneer on that?</p> <p>8 A. Yes, I did.</p> <p>9 Q. Okay. And did you seek counsel input on that</p> <p>10 as well?</p> <p>11 A. I did.</p> <p>12 Q. Okay. So you essentially converted the live</p> <p>13 auction process to a sealed bid process?</p> <p>14 A. It was a sealed bid process that ultimately did</p> <p>15 not convert to a live bid auction. It stayed a sealed</p> <p>16 bid process.</p> <p>17 Q. Did you consider, since you were changing what</p> <p>18 is in the sentence that's here that we just went over --</p> <p>19 did you consider going and asking the Court for</p> <p>20 permission to do that?</p> <p>21 A. Well, I didn't change the sentence that's on</p> <p>22 the page. I don't know what you mean.</p> <p>23 Q. Well, it says, "The trustee reserves the right</p> <p>24 to accept or reject bids, evaluate offers compared to</p> <p>25 other offers received and/or projected revenues from a</p>	
10:01:05-10:02:57	Page 22	10:04:27-10:05:35	Page 24
<p>1 through the sealed bidding process?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Okay. So let's go to, if we could,</p> <p>4 page 11 of Exhibit 9.</p> <p>5 A. Okay.</p> <p>6 Q. All right. No. 1, where it says "sealed bid</p> <p>7 sale." Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. All right. I think it's the second full</p> <p>10 sentence starts with, "The trustee reserves the right to</p> <p>11 accept or reject bids."</p> <p>12 Are you there?</p> <p>13 A. Uh-huh.</p> <p>14 Q. All right. "Evaluate offers compared to other</p> <p>15 offers received and/or projected revenues from a</p> <p>16 piecemeal auction and open up the sealed bid for live</p> <p>17 bidding between competitive bidders."</p> <p>18 And that's defined as the auction,</p> <p>19 correct?</p> <p>20 A. I see that.</p> <p>21 Q. All right. And did you open up the accepted</p> <p>22 bids to live bidding?</p> <p>23 A. No.</p> <p>24 Q. And you determined that instead of having a</p> <p>25 live auction, that you would move to a sealed bid,</p>		<p>1 piecemeal auction and open up the sealed bid for live</p> <p>2 bidding between competitive bidders," right?</p> <p>3 And you didn't do that.</p> <p>4 A. You asked me if I changed what's on the page in</p> <p>5 the initial bid procedures. I did not change the</p> <p>6 initial bid procedures.</p> <p>7 Q. Okay. When you decided not to go to a live</p> <p>8 bidding procedure, did you consider going to the Court</p> <p>9 and asking for the Court's permission to do that?</p> <p>10 A. No.</p> <p>11 Q. Did you think that the sale order allowed you</p> <p>12 to do that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 MR. PATERSON: Sorry to interrupt. I'm</p> <p>16 told there are people online waiting to get on the Zoom.</p> <p>17 So if the court reporter or whoever wouldn't mind</p> <p>18 letting them in?</p> <p>19 MR. CICACK: Can we just go off the record</p> <p>20 for a minute.</p> <p>21 THE VIDEOGRAPHER: The time is --</p> <p>22 MR. WOLFSHOHL: They've been let in the</p> <p>23 room.</p> <p>24 THE VIDEOGRAPHER: Okay. They are in,</p> <p>25 Walter. Do you still want to go off?</p>	

10:05:36-10:07:15	Page 25	10:08:41-10:10:36	Page 27
<p>1 MR. CICACK: No.</p> <p>2 THE VIDEOGRAPHER: Okay. Thanks.</p> <p>3 MR. WOLFSHOHL: Walt, did you want them to</p> <p>4 announce?</p> <p>5 MR. CICACK: Are they just listening?</p> <p>6 MR. WOLFSHOHL: I don't know. The only</p> <p>7 other people that I know might ask questions are X.</p> <p>8 MS. RECKLER: This is Caroline Reckler. I</p> <p>9 have two of my colleagues. I didn't announce them. I</p> <p>10 apologize. I don't think they're the new people who</p> <p>11 joined, but if you're seeing the names Christopher</p> <p>12 Harris or Jon Weichselbaum, they're with me.</p> <p>13 MR. PATERSON: Yeah. And it was just Kyle</p> <p>14 Kimpler from Paul Weiss who just joined.</p> <p>15 MR. CICACK: Okay.</p> <p>16 MR. KIMPLER: Sorry for the interruption.</p> <p>17 Thank you.</p> <p>18 BY MR. CICACK:</p> <p>19 Q. All right, sir. Let's go to page 12.</p> <p>20 A. (Witness complies.)</p> <p>21 Q. Now, again, this is page 12 of Exhibit 9. I</p> <p>22 want to go to paragraph 9, where it -- the last sentence</p> <p>23 of paragraph 9 says, "If sales agent and trustee</p> <p>24 determine that no auction will be held, the sales agent</p> <p>25 and trustee will determine whether or not any qualified</p>	<p>1 term is defined there, that occurred?</p> <p>2 A. No.</p> <p>3 Q. Okay. So the defined term auction here on</p> <p>4 paragraph 1 of page 11, that did not occur?</p> <p>5 A. The defined term, as I understand it, in these</p> <p>6 initial bid procedures is defined to refer to a live</p> <p>7 bidding auction; and I determined not to do that.</p> <p>8 Q. Just so we're clear, so what's defined here as</p> <p>9 the auction didn't occur?</p> <p>10 A. This defined term on this page, yeah, I decided</p> <p>11 not to do that.</p> <p>12 Q. Okay. So let's go to page -- back to page 12</p> <p>13 of Exhibit 9. And so when it talks about auction,</p> <p>14 paragraph 10, and using the defined term auction, that</p> <p>15 didn't happen, right? So nothing in paragraph 10</p> <p>16 happened?</p> <p>17 A. I don't know. I'd have to read paragraph 10.</p> <p>18 Q. Take your time and read it.</p> <p>19 A. Okay. Could you remind me the question?</p> <p>20 Q. Okay. My question is that nothing set out in</p> <p>21 paragraph 10 actually happened?</p> <p>22 A. That's not true.</p> <p>23 Q. Okay. So what happened in paragraph 10?</p> <p>24 A. Qualified bidders only were allowed to</p> <p>25 participate in the auction that we conducted.</p>		
10:07:17-10:08:38	Page 26	10:10:39-10:12:09	Page 28
<p>1 bids will be accepted or rejected."</p> <p>2 A. I see that.</p> <p>3 Q. All right. Did you determine that an auction</p> <p>4 would not be held?</p> <p>5 A. I determined we wouldn't hold a live auction.</p> <p>6 Q. Okay. So is it your testimony that an auction</p> <p>7 did take place?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So you didn't determine to not have an</p> <p>10 auction, right?</p> <p>11 A. I determined not to have a live auction.</p> <p>12 Q. All right. But just so we're clear, your</p> <p>13 testimony is that an auction did, in fact, happen?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And when did that auction happen?</p> <p>16 A. It happened over the days between receiving the</p> <p>17 initial bids that were announced as qualified bids and</p> <p>18 the deadline to submit highest and best sealed bids.</p> <p>19 Q. Okay. And so if we go back -- if you could, go</p> <p>20 back to page 11 of Exhibit 9, paragraph 1. You see</p> <p>21 where it defines what an auction is? There's a defined</p> <p>22 term auction.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. All right. So it's your testimony that as that</p>	<p>1 Q. Well, but the auction as defined here is a live</p> <p>2 auction.</p> <p>3 A. Oh, I suppose -- okay. Yeah. If you're</p> <p>4 viewing it that way, then yes, the auction with a</p> <p>5 capital A didn't happen.</p> <p>6 Q. So nothing in paragraph 10 happened?</p> <p>7 A. Yeah. I think the defined term's in each</p> <p>8 sentence. Sure.</p> <p>9 Q. So it didn't happen. You decided just to scrap</p> <p>10 this Provision 10? I understand you think you had the</p> <p>11 discretion to do that, but I just want to make sure</p> <p>12 we're clear.</p> <p>13 Nothing in paragraph 10 actually happened?</p> <p>14 A. I didn't hold a live auction.</p> <p>15 Q. Okay. And at the auction you did have the</p> <p>16 auction didn't lead off with an announced lead bid, did</p> <p>17 it?</p> <p>18 A. No.</p> <p>19 Q. Okay. And the auction didn't open at a highest</p> <p>20 bid amount?</p> <p>21 A. No.</p> <p>22 Q. And qualified bidders were not allowed to</p> <p>23 overbid in minimum increments?</p> <p>24 A. Within what paragraph 10 is saying, no, they</p> <p>25 weren't. That didn't happen.</p>		

10:12:12-10:13:57	Page 29	10:15:33-10:17:52	Page 31
<p>1 Q. All right. Now, let me ask you to look at 2 paragraph 11, where it says "Bankruptcy Court Approval." 3 It says, "If one or more bids are awarded by the 4 trustee, whether before or as a result of the auction, 5 the trustee is authorized to proceed to close the sale 6 and the sale is not subject to further approval by the 7 bankruptcy court."</p> <p>8 Did I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. Is that accurate?</p> <p>11 A. At the time this document was done, yes, that's accurate.</p> <p>13 Q. Did something change about that?</p> <p>14 A. Yes.</p> <p>15 Q. What was that?</p> <p>16 A. At the time we issued these procedures, I had a wind-down order that authorized me to sell assets of FSS. Subsequent to that, the Court entered an order that made the assets of FSS assets of the Chapter 7 individual bankruptcy estate. And that to me triggered a requirement to get court approval under 363.</p> <p>22 Q. And that is the motion we're here about today?</p> <p>23 A. Yes.</p> <p>24 Q. All right. Let's go to page -- I'm sorry, same page. Let's go to paragraph 12.</p>		<p>1 think is the sale order.</p> <p>2 A. Are we going to need 9 again?</p> <p>3 Q. I try to keep the paper at a minimum.</p> <p>4 A. Okay.</p> <p>5 Q. All right. And you're familiar with this order?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Let's go to page 3. And the first sentence there talks about Tranzon's commission?</p> <p>10 A. I see that.</p> <p>11 Q. And as I understand what this is saying is that Tranzon's commission can be paid from the proceeds of the sale without further approval of the bankruptcy court. Is that your understanding?</p> <p>15 A. Let me read this.</p> <p>16 Q. Yeah, sure.</p> <p>17 A. Okay. Could you remind me your question?</p> <p>18 Q. Yeah. So my question is that, as I appreciate it, Tranzon's commission will be paid from the closing -- the proceeds from the closing and further court approval is not needed for that.</p> <p>22 A. Yes. That's my understanding.</p> <p>23 Q. All right. So if the Court approves the sale to the joint bidders as you've requested, what is Tranzon's commission?</p>	
10:14:09-10:15:30	Page 30	10:17:58-10:19:10	Page 32
<p>1 Paragraph 12 talks about closing and final payment, correct?</p> <p>3 A. Yes.</p> <p>4 Q. All right. The second full sentence says, "Sales agent shall provide bidder with an invoice and wiring instructions, including the bid amount, the buyer's premium and sales tax."</p> <p>8 Do you see that?</p> <p>9 A. I see that.</p> <p>10 Q. Okay. And has a sales agent provided the joint bidder with an invoice?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. And when it talks about the buyer's premium, what is that?</p> <p>15 A. My understanding of a buyer's premium is it's an additional amount charged on top of a bid by the auction house.</p> <p>18 Q. Okay. And is that present in this case?</p> <p>19 A. No.</p> <p>20 Q. All right. I think that's all for Exhibit 9 right now.</p> <p>22 (Murray Exhibit 1 was marked for identification.)</p> <p>24 BY MR. CICACK:</p> <p>25 Q. Let's go if we could to Exhibit 1, which I</p>		<p>1 A. I don't know.</p> <p>2 Q. Have you not calculated it yet?</p> <p>3 A. I understand there will be a range. I've made estimates of it.</p> <p>5 Q. Okay. When you say a range, isn't it based on a certain percentage?</p> <p>7 A. Yes.</p> <p>8 Q. So why a range? Why can't you tell us what the exact commission amount would be?</p> <p>10 A. Because the compensation will ultimately depend in part on the amount of the distributable proceeds waiver, and I don't know what that amount is yet.</p> <p>13 Q. Okay. So if I hear you, what you're saying is that the distributable proceeds waiver, if the sale goes through as contemplated, it will have a value; and at some point that will be determined and Tranzon will get paid a commission on that value from the cash proceeds, correct?</p> <p>19 A. Yes. That is my understanding.</p> <p>20 Q. Okay. It's not like the Connecticut families or any other creditors are going to pay Tranzon, right?</p> <p>22 You're going to pay Tranzon?</p> <p>23 A. Yes.</p> <p>24 Q. From the million-750?</p> <p>25 A. Yes.</p>	

10:19:11-10:21:26	Page 33	10:23:19-10:24:18	Page 35
<p>1 Q. Okay. So the distributable proceeds waiver, 2 and I think we'll spend a fair amount of time on that; 3 but tell me why it is that you can't determine what that 4 is now.</p> <p>5 A. I believe the amount will be based on how much 6 cash is available to the general unsecured creditors of 7 FSS from the sale, and that will be net of 8 administrative costs of the sale. And that I don't know 9 for certain right now.</p> <p>10 Q. Okay. And is there a range?</p> <p>11 A. I've estimated a range.</p> <p>12 Q. What is your estimated range?</p> <p>13 A. Oh, I don't know. There's lots of spreadsheets 14 and analysis. I don't remember exactly.</p> <p>15 Q. Okay. Did you do that or did Tranzon do that?</p> <p>16 A. I did that.</p> <p>17 Q. Okay.</p> <p>18 A. Well, we both did.</p> <p>19 Q. I didn't see any spreadsheets in your 20 production, but I did see some in Tranzon's production. 21 So that's why I'm asking that question.</p> <p>22 A. Okay. I did spreadsheets.</p> <p>23 Q. Okay. I don't have extra copies of these right 24 now, but I'll get some at the break. If I could just 25 hand you these documents and ask you if these look like</p>	<p>1 their compensation would be based on the distributable 2 proceeds waiver.</p> <p>3 Q. Okay. So whatever value is ascribed to that, 4 you're not sure today how Tranzon's going to get 5 compensated on that?</p> <p>6 A. That's right.</p> <p>7 Q. Have you had any conversations with Tranzon 8 about that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And who did you speak to about that?</p> <p>11 A. Jeff Tanenbaum.</p> <p>12 Q. Okay. Were any of your communications with him 13 about this issue via e-mail or text?</p> <p>14 A. I don't think so.</p> <p>15 Q. All verbal?</p> <p>16 A. I think we talked about it a couple of times.</p> <p>17 Q. In person or over the phone?</p> <p>18 A. Over the phone.</p> <p>19 Q. Can you just tell me, generally speaking, what 20 was the gist of the conversation?</p> <p>21 A. The gist of the conversation was this 22 distributable proceeds waiver is unique. We'll need to 23 figure out what appropriate compensation is under your 24 engagement letter and given the value of your services 25 based on that kind of consideration being paid in the</p>		
10:21:28-10:23:17	Page 34	10:24:20-10:25:32	Page 36
<p>1 the spreadsheets that you were talking about?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So I'll make copies later on, but I just 4 want to make sure. This is what you're talking about?</p> <p>5 A. Among others, but yes.</p> <p>6 Q. And so when you're determining Tranzon's 7 compensation, you're considering the value that you 8 ascribe to the distributable proceeds waiver as sales 9 revenues?</p> <p>10 A. I'm not sure I understand your question.</p> <p>11 Q. Well, as I understand it, their compensation is 12 based on sales revenues.</p> <p>13 A. Yes.</p> <p>14 Q. Revenues from the sales, correct?</p> <p>15 A. That's my understanding.</p> <p>16 Q. All right. So when you're determining their 17 compensation, Tranzon's compensation, you're including 18 whatever value you ascribe to the distributable proceeds 19 waiver as part of the sales revenues?</p> <p>20 A. Well, I haven't determined their compensation 21 yet.</p> <p>22 Q. Okay. So are you saying that they may not be 23 compensated on the portion of the sale that's 24 attributable to the distributable proceeds waiver?</p> <p>25 A. Yeah. I'm saying I'm not sure exactly how</p>	<p>1 auction.</p> <p>2 Q. But y'all have not reached a final resolution 3 to that?</p> <p>4 A. No.</p> <p>5 Q. Okay. Just for my sake, can we -- instead of 6 calling it the distributable proceeds waiver, can we 7 just call it the waiver and we'll know what we're 8 talking about?</p> <p>9 A. Sure.</p> <p>10 Q. It's just a lot to say.</p> <p>11 A. We could call it the DPW.</p> <p>12 Q. That's what I call it, but that's almost worse.</p> <p>13 A. Yeah. It is more syllables.</p> <p>14 Q. It's almost worse. All right.</p> <p>15 Let's go to page 5 of Exhibit 1, please.</p> <p>16 A. Okay. I'm there.</p> <p>17 Q. Okay. And so you see right in the middle on 18 paragraph 5 it says, "The IP assets auction" --</p> <p>19 A. Yes.</p> <p>20 Q. -- "if applicable"? And it says that it will 21 be held November 13th at 10:00 a.m. through Tranzon's 22 selected online auction platform, correct?</p> <p>23 A. I see that.</p> <p>24 Q. That didn't happen, right?</p> <p>25 A. Right.</p>		

10:25:33-10:27:34	Page 37	10:28:53-10:30:53	Page 39
<p>1 Q. Okay. Now, just as an aside, is the remaining 2 asset auction going to go forward on the 10th?</p> <p>3 A. No.</p> <p>4 Q. Okay. Have you announced that yet to anybody?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay. Can we rely on you telling us today that 7 it's not going to happen?</p> <p>8 A. It's not going to happen on the 10th.</p> <p>9 Q. All right. Can you explain why?</p> <p>10 A. Well, the remaining assets auction comes after the IP assets auction and sale; and that hasn't concluded yet.</p> <p>13 Q. But it might on the 9th theoretically?</p> <p>14 A. It might.</p> <p>15 Q. But even if the judge were to unqualifiedly 16 approve your motion, the remaining asset sale is not 17 going to happen on the 10th?</p> <p>18 A. Right.</p> <p>19 Q. Okay. And do you plan to notice out to people 20 when it's going to happen?</p> <p>21 A. Yes. We will provide a notice when the new date is set.</p> <p>23 Q. Okay. Let's go to page 8 of Exhibit 1, 24 paragraph 8. It says, "No later than five business days 25 following the IP asset's bid deadline, the trustee will</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. You didn't make that decision, though, 3 did you?</p> <p>4 A. Right.</p> <p>5 Q. Okay. So you decided to go forward with an 6 auction, just not the live auction?</p> <p>7 A. Yes.</p> <p>8 Q. And would you agree that, if you go back to 9 page 5, that the definition of the IP assets auctions 10 just like the definition that was in the bid procedures 11 we looked at -- I'm sorry, the bid package we looked, IP 12 assets auction is defined as the live auction?</p> <p>13 A. That's how I understand this, yes.</p> <p>14 Q. All right. So let's go to -- if we could, go 15 to page 9, in particular, paragraph 12. I'm not going 16 to read it. If you would read paragraph 12, I've got 17 some questions to ask you about that.</p> <p>18 A. Okay.</p> <p>19 Q. All right. Now, is this one of the provisions 20 that you believe gives you discretion to move from the 21 live auction process?</p> <p>22 A. Yes.</p> <p>23 Q. And as you discussed, you decided to change the 24 process from a live auction to a sealed bid process?</p> <p>25 A. It was always a sealed bid process. I decided</p>		
10:27:37-10:28:52	Page 38	10:30:56-10:32:10	Page 40
<p>1 determine which potential bidders are qualified bidders 2 and will notify the potential bidders whether sealed 3 bids submitted constitute qualified bids, which will 4 enable the qualified bidders to participate in the IP 5 assets auction if held," correct?</p> <p>6 A. Yes.</p> <p>7 Q. I read it right?</p> <p>8 A. You said "the" instead of "such," but substantively it was correct.</p> <p>10 Q. All right. So the only qualified bidders were 11 First United and the joint bidders?</p> <p>12 A. Yes.</p> <p>13 Q. And you notified both of them that their bids 14 were qualified?</p> <p>15 A. Yes.</p> <p>16 Q. But the IP assets auction as defined here did 17 not happen?</p> <p>18 A. Right. There was no live auction.</p> <p>19 Q. But you also didn't determine that you weren't 20 going to have an auction, right?</p> <p>21 A. When?</p> <p>22 Q. At any point? Well, let me ask you this. Do 23 you believe that your authority allowed you to not go 24 forward with any auction if that's what you decided to 25 do?</p>	<p>1 not to have a live auction as well.</p> <p>2 Q. But you decided to still have an auction using 3 the qualified bidders, right?</p> <p>4 A. Yes.</p> <p>5 Q. For instance, you had the authority, I think -- 6 and tell me if I'm wrong. You had the authority to stop 7 at the qualified bid procedures, right, and take the 8 qualified bids and say, I'm going with this one, and not 9 even move forward with an auction?</p> <p>10 A. Yes.</p> <p>11 Q. You decided not to do that?</p> <p>12 A. Right.</p> <p>13 Q. Okay. So instead, rather than move forward as 14 set forth here in the live auction process, you decided 15 not to go with a live auction process?</p> <p>16 A. Yes.</p> <p>17 Q. But you still decided to go forward with a 18 subsequent auction?</p> <p>19 A. Yes.</p> <p>20 Q. All right. And so that subsequent auction was 21 a different procedure than the live auction?</p> <p>22 A. Yes.</p> <p>23 Q. All right. And did you have the live auction 24 and announce your change in procedures at the live 25 auction?</p>		

10:32:10-10:33:47	Page 41	10:35:10-10:36:33	Page 43
<p>1 A. No.</p> <p>2 Q. Why not?</p> <p>3 A. There wasn't a live auction.</p> <p>4 Q. Well, am I wrong that -- it seems to me that</p> <p>5 paragraph 12 authorizes you to implement other</p> <p>6 procedures as you may announce at the auction.</p> <p>7 A. With a capital A, yeah, that's what it says.</p> <p>8 Q. Right. That's the live auction?</p> <p>9 A. Right. And there wasn't one.</p> <p>10 Q. Right. Well, then what about this paragraph do</p> <p>11 you think authorizes you to make changes in the</p> <p>12 procedures without announcing it at the live auction?</p> <p>13 A. I thought you asked me if this paragraph is one</p> <p>14 of the several paragraphs that gives me discretion to</p> <p>15 change procedures, and I said yes.</p> <p>16 Q. Okay. Well, this paragraph, though, says that</p> <p>17 if you change procedures, you've got to announce it at</p> <p>18 the live auction.</p> <p>19 A. This paragraph says that?</p> <p>20 Q. Right. And you didn't do that?</p> <p>21 A. No.</p> <p>22 Q. Okay. Did you cancel the IP auction?</p> <p>23 A. Are you referring to the defined term?</p> <p>24 Q. Yeah, the defined term.</p> <p>25 A. We didn't have a live auction.</p>		<p>1 your intent to have a live auction?</p> <p>2 A. I didn't know.</p> <p>3 Q. Okay. So it wasn't -- you didn't know whether</p> <p>4 you were going to have a live auction or not?</p> <p>5 A. That's right.</p> <p>6 Q. And so it wasn't your intent to have a live</p> <p>7 auction at the time. Maybe you would; maybe you</p> <p>8 wouldn't?</p> <p>9 A. That's right.</p> <p>10 Q. So how were bidders supposed to know whether or</p> <p>11 not you were going to move forward with a live auction?</p> <p>12 A. We told you.</p> <p>13 Q. Well, this paragraph 12 says you're supposed to</p> <p>14 tell them at the live auction.</p> <p>15 A. That's what that paragraph says.</p> <p>16 Q. Okay. So the procedure you changed to, the</p> <p>17 procedure you decided to use, okay, what was that</p> <p>18 procedure?</p> <p>19 A. We asked for the two qualified bidders to</p> <p>20 submit their highest and best offers on a bid form to</p> <p>21 indicate which lots they wanted and what their bids were</p> <p>22 on those items.</p> <p>23 Q. Did you disclose to the qualified bidders who</p> <p>24 the other qualified bidders were?</p> <p>25 A. No.</p>	
10:33:49-10:35:06	Page 42	10:36:34-10:38:06	Page 44
<p>1 Q. Did you formally cancel it?</p> <p>2 A. I'm not sure what you mean by that.</p> <p>3 Q. Did you file any sort of notice with the Court</p> <p>4 that you were canceling the live auction?</p> <p>5 A. I did not file a notice that there would not be</p> <p>6 a live auction.</p> <p>7 Q. Did you file any notice with the Court</p> <p>8 notifying the Court that you were moving -- that you</p> <p>9 were not going to go forward with the live auction?</p> <p>10 A. I did not file a notice.</p> <p>11 Q. Okay.</p> <p>12 A. No.</p> <p>13 Q. Now, tell me, when you decided to move from a</p> <p>14 live auction to other procedures, what were those other</p> <p>15 procedures?</p> <p>16 A. I decided not to have a live auction. Your</p> <p>17 question assumes that I did and then changed my mind.</p> <p>18 So could you ask your question again?</p> <p>19 Q. Well, wait a second.</p> <p>20 A. There was a premise there.</p> <p>21 Q. This sales order says there's going to be a</p> <p>22 live auction.</p> <p>23 A. It says there could be.</p> <p>24 Q. Look at page 5. So are you telling me that at</p> <p>25 the time that this sale order was entered, it wasn't</p>		<p>1 Q. Okay. Did you disclose to the qualified</p> <p>2 bidders what the amounts of the qualified bids were?</p> <p>3 A. No.</p> <p>4 Q. Why not?</p> <p>5 A. Because the point of a highest and best bid</p> <p>6 round is that the bidders don't know what the others are</p> <p>7 going to bid and, therefore, there is this tension that</p> <p>8 causes them to want to bid more. If you knew what the</p> <p>9 other bidders were bidding, you'd just bid one dollar</p> <p>10 more and the estate would lose the chance of getting</p> <p>11 significantly higher bids.</p> <p>12 Q. Well, wait a second. How does knowing the</p> <p>13 original qualified bid give you any information about</p> <p>14 what the bidder might ultimately bid in terms of his</p> <p>15 highest and best? Explain that to me.</p> <p>16 A. At a minimum, it tells you where they started.</p> <p>17 Q. Okay. And so you decided not to communicate,</p> <p>18 not to disclose to either of the qualified bids what</p> <p>19 their starting bids were?</p> <p>20 A. What the other's starting bids -- that's right.</p> <p>21 I did not disclose the amount of the bids to the other</p> <p>22 bidders.</p> <p>23 Q. Did you -- and you didn't disclose the</p> <p>24 identities?</p> <p>25 A. No.</p>	

10:38:07-10:40:34	Page 45	10:41:47-10:43:31	Page 47
<p>1 Q. To either of them?</p> <p>2 A. No.</p> <p>3 Q. All right. So tell me the provisions or</p> <p>4 provision of this sale order that you believe allowed</p> <p>5 you to move from a live auction to another procedure</p> <p>6 without announcing that change at the live auction</p> <p>7 itself.</p> <p>8 A. Paragraph 29 is one of them.</p> <p>9 Q. Anything else?</p> <p>10 A. As I sit here right now, I can read through the</p> <p>11 document and try and point out more.</p> <p>12 Q. All right. So let's go back, just so -- that's</p> <p>13 all you can identify now?</p> <p>14 A. It's the first one that comes to mind. I'm</p> <p>15 happy to spend more time looking.</p> <p>16 Q. Okay. Well, maybe we'll do that in a minute.</p> <p>17 Let's go back to page 5. The IP assets</p> <p>18 auction, do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. That didn't happen, right?</p> <p>21 A. There was no live auction, that's right.</p> <p>22 Q. Did you cancel it?</p> <p>23 A. I didn't hold it.</p> <p>24 Q. Okay. Is that different than canceling it?</p> <p>25 A. Yes.</p>		<p>1 that it didn't happen, right?</p> <p>2 A. Yes. I mean, no, I did not.</p> <p>3 Q. Don't you think the Court thought it was going</p> <p>4 to happen?</p> <p>5 A. I don't know.</p> <p>6 Q. Well, look at paragraph 17 on page 11 of the</p> <p>7 order. It says, "If the IP assets auction is canceled,</p> <p>8 then the trustee shall file a notice with the Court of</p> <p>9 such election within two business days of determination</p> <p>10 of such election by the trustee."</p> <p>11 A. I see that.</p> <p>12 Q. All right. So you think there's a substantive</p> <p>13 difference between not holding it and canceling it?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. You don't think this paragraph makes it</p> <p>16 pretty clear the Court wanted to know if you weren't</p> <p>17 going to go forward with the live auction, the Court</p> <p>18 wanted you to file a notice?</p> <p>19 A. That's not how I interpreted that.</p> <p>20 Q. Okay. Let's go to paragraph 29 of the exhibit.</p> <p>21 And this is the paragraph that you say that you think</p> <p>22 allows you to change the procedures without announcing</p> <p>23 those changed procedures at the live auction?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. All right. So let's look at, if we</p>	
10:40:35-10:41:45	Page 46	10:43:50-10:45:23	Page 48
<p>1 Q. Okay. What's the difference?</p> <p>2 A. Well, you cancel something that's been</p> <p>3 scheduled and is going to happen. That hadn't happened</p> <p>4 yet.</p> <p>5 Q. Well, this was certainly scheduled?</p> <p>6 A. "The IP assets auction, if any, will be held</p> <p>7 November 13th."</p> <p>8 Q. "Subject to rescheduling or cancellation."</p> <p>9 So I'm asking you, did you reschedule or</p> <p>10 did you cancel? What did you do?</p> <p>11 A. Well, maybe we're talking past each other. I</p> <p>12 informed both qualified bidders that we weren't going to</p> <p>13 have a live auction.</p> <p>14 Q. Okay. So are you telling me then you canceled</p> <p>15 it?</p> <p>16 A. I didn't hold a live auction. I'm not -- I</p> <p>17 characterize it and apparently think about it</p> <p>18 differently than you do.</p> <p>19 Q. Well, I'm looking at the order. It says,</p> <p>20 "Subject to rescheduling or cancellation," and I'm just</p> <p>21 trying to figure out, did you reschedule it or did you</p> <p>22 cancel it?</p> <p>23 A. It didn't happen.</p> <p>24 Q. Didn't happen. Okay. All right. And you</p> <p>25 didn't file a notice with the Court to tell the Court</p>		<p>1 could, down at the bottom where it talks about imposing</p> <p>2 additional terms and provisions here.</p> <p>3 Did you extend the deadlines for anyone to</p> <p>4 submit sealed bids?</p> <p>5 A. No.</p> <p>6 Q. Did you adjourn any auction?</p> <p>7 A. No.</p> <p>8 Q. Did you modify the auction and sales procedures</p> <p>9 or add procedural rules that were reasonably necessary</p> <p>10 or advisable under the circumstances for conducting the</p> <p>11 auction?</p> <p>12 A. The capital A auction, no, because there wasn't</p> <p>13 a live auction.</p> <p>14 Q. Okay. Did you cancel any auction, capital A</p> <p>15 auction?</p> <p>16 A. No.</p> <p>17 Q. Did you reject any sealed bids, qualified bids</p> <p>18 or -- did you reject any sealed or qualified bids?</p> <p>19 A. No.</p> <p>20 Q. Also it says, next sentence says, "For the</p> <p>21 avoidance of doubt, the trustee reserves the right at</p> <p>22 any point prior to the selection of the successful</p> <p>23 bidder at the IP assets auction or successful bidders at</p> <p>24 the remaining assets auction to terminate the sales</p> <p>25 price contemplated hereunder with respect to any and all</p>	

10:45:26-10:47:57	Page 49	10:49:22-10:50:50	Page 51
<p>1 of the FSS assets and seek to sell any and all assets by 2 alternative means."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. All right. And you did not at any point 6 terminate the sale process, correct?</p> <p>7 A. No.</p> <p>8 Q. Okay. Is there anything that you think in 9 paragraph 29 that's inconsistent with paragraph 12?</p> <p>10 A. I'm not sure how to answer that. I'm not sure they are inconsistent.</p> <p>12 Q. Okay. Let me ask you this. I mean, do you 13 think it's reasonable for the bidders to rely on you to 14 follow the sale order?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Let's look at paragraph 30 of Exhibit 1.</p> <p>17 A. Okay.</p> <p>18 Q. Now, where it says here, the last sentence, 19 "All parties reserve the right to seek" -- sorry, 20 second-to-last sentence. "All parties reserve the right 21 to seek court relief, included on an expedited basis, 22 with regard to the auctions and any related items."</p> <p>23 Would you agree that my client has the 24 right to seek court relief in connection with the sale 25 motion?</p>		<p>1 Q. Okay. What is the purchase price that the 2 joint bidders are paying?</p> <p>3 A. 1.75 million.</p> <p>4 Q. That's all?</p> <p>5 A. That's the purchase price cash component of their bid.</p> <p>7 Q. Okay. Does the noncash component have a cash 8 value?</p> <p>9 A. Well, I disagree that it's a noncash -- yes, it does. The other components of the bid do have a value.</p> <p>11 Q. Okay. You don't -- all right. Well, we'll get 12 to that.</p> <p>13 Are you saying that the waiver, the DPW, 14 is not a -- is different than a noncash component?</p> <p>15 A. I guess you could characterize it that way, yes.</p> <p>17 Q. Well, that was a bad question or a bad answer, 18 one or the other.</p> <p>19 Are you saying that it is a noncash 20 component?</p> <p>21 A. Yeah. It's a noncash -- it's a nonpurchase cash component but it could be measured in a cash equivalent.</p> <p>24 Q. And on the bid that you accepted, what is the 25 cash equivalent?</p>	
10:47:58-10:49:22	Page 50	10:50:53-11:05:03	Page 52
<p>1 A. Looks like this sentence gives you rights with respect to a capital A auction, which I thought we established didn't happen.</p> <p>4 Q. Okay. But isn't that a related item, though?</p> <p>5 What happened, isn't that related?</p> <p>6 A. I don't have a view on that.</p> <p>7 Q. Okay. So is it your position that my client 8 doesn't have the right to come in and argue that the 9 sale as you are requesting it should not be approved?</p> <p>10 A. You're already doing that. You're already making --</p> <p>12 Q. No. But I'm asking you. You're the trustee.</p> <p>13 Are you saying -- are you taking the 14 position we don't have the right to contest the sale?</p> <p>15 A. Of course you can contest the sale, and you've done it.</p> <p>17 Q. Let's go to page 6 of the sale order. I want 18 to talk about this bullet point, "Identity of assets and 19 purchase price."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. All right. The last sentence says, "The 23 purchase price should be a specific amount in U.S. 24 dollars, not a range."</p> <p>25 A. Yes.</p>		<p>1 A. 7 million.</p> <p>2 Q. And where did you get that from?</p> <p>3 A. The bid form.</p> <p>4 Q. All right. We will get to that.</p> <p>5 MR. CICACK: Do you want to take a quick 6 break?</p> <p>7 THE WITNESS: Sure.</p> <p>8 MR. WOLFSHOHL: Sure.</p> <p>9 THE VIDEOGRAPHER: The time is 10:50, and 10 we are off the record.</p> <p>11 (Recess taken)</p> <p>12 THE VIDEOGRAPHER: The time is 11:02, and 13 we are back on the record.</p> <p>14 (Murray Exhibit 3 was marked for 15 identification.)</p> <p>16 BY MR. CICACK:</p> <p>17 Q. Thank you, sir. Let's look, if we can, move to 18 Exhibit 3, which is the initial form, or bid form, that 19 was submitted by First United.</p> <p>20 A. I don't have Exhibit 3 unless it got paper-clipped in with the other ones. No. I don't have a 3.</p> <p>23 Q. This is marked as 3. There you go.</p> <p>24 A. Okay.</p> <p>25 Q. Sorry about that.</p>	

11:05:03-11:06:06	Page 53	11:07:57-11:10:02	Page 55
<p>1 A. No problem.</p> <p>2 Q. All right. So Exhibit 3 is a copy of the First</p> <p>3 United bid, initial bid, correct?</p> <p>4 A. Yes.</p> <p>5 Q. You've seen that before, right?</p> <p>6 A. I have.</p> <p>7 Q. And it was pretty easy to understand, was it</p> <p>8 not?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And did you understand that the total</p> <p>11 amount being bid was 1,200,000 for all of the assets</p> <p>12 being sold?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And you received the 10 percent deposit,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you determined that this was a qualified</p> <p>18 bid and met all the requirements?</p> <p>19 A. I determined it was a qualified bid.</p> <p>20 Q. Did it not meet all the requirements?</p> <p>21 A. Not 100 percent but not enough to not make it a</p> <p>22 qualified bid.</p> <p>23 Q. Okay. What requirements didn't they meet?</p> <p>24 A. Well, there's a nonconforming addendum to the</p> <p>25 lots, where I think your client wanted to include a</p>	<p>1 Q. All right. Let's look at bid -- Exhibit 4,</p> <p>2 which is the --</p> <p>3 A. Do you want this one back?</p> <p>4 Q. No, no. It's marked.</p> <p>5 A. Okay. I've got 4.</p> <p>6 Q. All right. Beautiful. This is the bid with</p> <p>7 accompanied letter that was submitted by the joint</p> <p>8 bidders?</p> <p>9 A. Yes.</p> <p>10 Q. And as I understand it, this bid was ultimately</p> <p>11 qualified?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And how much -- what was the amount bid</p> <p>14 by the joint bidders in this bid?</p> <p>15 A. They bid a million.</p> <p>16 Q. All right. Had you had any discussions with</p> <p>17 Global Tetrahedron before they submitted this bid?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. How many discussions? Do you recall how</p> <p>20 many discussions you had with them?</p> <p>21 A. Personally, I can think of three phone calls.</p> <p>22 Q. Okay. Can you explain just in general what</p> <p>23 those calls were about?</p> <p>24 A. Yes. One was with Mr. Collins, and my</p> <p>25 recollection is he was asking generally how's the</p>	<p>11:06:10-11:07:57</p>	Page 54
<p>1 couple of assets that were not contemplated in the</p> <p>2 initial bid. That's what the addendum was. But I,</p> <p>3 nevertheless, qualified the bid.</p> <p>4 Q. Well, in fact, the assets that are listed on</p> <p>5 the addendum, weren't they after we -- after we notified</p> <p>6 you or Tranzon that these were not part of the original</p> <p>7 package, weren't they added to the data room?</p> <p>8 A. Yes, yes.</p> <p>9 Q. All right. And did you understand that First</p> <p>10 United's intent was to continue the business that was</p> <p>11 ongoing there as an ongoing concern?</p> <p>12 A. Yes.</p> <p>13 Q. Were there any other potential bidders that you</p> <p>14 talked to that you understood were also interested in</p> <p>15 maintaining the operating business as a going concern?</p> <p>16 A. No. I mean, not that I talked to.</p> <p>17 Q. So does that mean that there were others that</p> <p>18 you just don't remember?</p> <p>19 A. No. I vaguely recall there was one party -- at</p> <p>20 least one party in the data room that was interested in</p> <p>21 acquiring some of the e-commerce platform, and whoever</p> <p>22 that was never submitted a bid.</p> <p>23 (Murray Exhibit 4 was marked for</p> <p>24 identification.)</p> <p>25 BY MR. CICACK:</p>	<p>11:10:04-11:11:20</p>	Page 56	

11:11:26-11:12:54	Page 57	11:14:28-11:15:51	Page 59
<p>1 intended to make a joint bid with the Connecticut 2 families?</p> <p>3 A. The moment their bid came in.</p> <p>4 Q. You did not know that before then?</p> <p>5 A. No, I did not.</p> <p>6 Q. Had you had any conversations with anyone on 7 behalf of the Connecticut families about the Connecticut 8 families making a bid?</p> <p>9 A. Yes.</p> <p>10 Q. Who?</p> <p>11 A. I talked to Kyle Kimpler. He's counsel for the Connecticut families.</p> <p>13 Q. Anybody else?</p> <p>14 A. I also talked to Avi Moshenberg, who is counsel to the Texas families; and the topic of Connecticut's participation might have come up.</p> <p>17 Q. Okay. So in your discussion with Mr. Kimpler, 18 it was discussed that the Connecticut families might be 19 making an offer?</p> <p>20 A. No, not exactly. They -- and this was before even the auction process, but they had expressed an interest in influencing the outcome of the auction by use of -- by virtue of the fact that they were the outsized creditor in the case.</p> <p>25 Q. Do you recall that you and I had a conversation</p>		<p>1 A. It was pretty vague, and what I told 2 Mr. Kimpler was I don't know how they could use their 3 claim. It's not my role. But that if they wanted to 4 propose something or make a bid, I would consider it. 5 But it's not like we had a detailed conversation about 6 how they might do it or what it would look like.</p> <p>7 Q. Okay. The concept of a distributable proceeds 8 waiver, the first time you saw that was when they made 9 the bid?</p> <p>10 A. Yes.</p> <p>11 Q. Had you ever heard of such a thing before?</p> <p>12 A. No.</p> <p>13 Q. The concept of it was not something that 14 Mr. Kimpler talked to you about?</p> <p>15 A. No.</p> <p>16 Q. Did he provide any examples of how they might 17 want to use their claim as currency?</p> <p>18 A. No, only just the highest level notion that 19 they wanted to use their claim in the bid process but 20 nothing specific about how or what that would manifest 21 as.</p> <p>22 Q. And did you have an understanding of why they 23 wanted to do that?</p> <p>24 A. Yes.</p> <p>25 Q. What was your understanding?</p>	
11:12:56-11:14:26	Page 58	11:15:52-11:17:45	Page 60
<p>1 where I asked you whether you were -- allow unsecured 2 creditors to credit bid?</p> <p>3 A. Vaguely, yes.</p> <p>4 Q. And do you recall that you told me that you 5 were not going to allow that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So the waiver, the DPW, you don't -- you 8 consider that qualitatively different than a credit bid?</p> <p>9 A. Right. It's not a credit bid.</p> <p>10 Q. Okay. I mean, didn't you understand from our 11 conversation that I had a concern about the unsecured 12 creditors using their claim as currency?</p> <p>13 A. I'm not sure I remember it that way, but I do 14 remember that conversation was long before we submitted 15 these bid procedures and set up the process.</p> <p>16 Q. But you would agree with me that the use of the 17 waiver, the DPW, is essentially using a claim as 18 currency?</p> <p>19 A. I guess that's one way to put it.</p> <p>20 Q. All right. So in your conversations with 21 Mr. Kimpler, did you all discuss -- or did he tell you 22 how they might want to use their claim?</p> <p>23 A. No.</p> <p>24 Q. Okay. Can you tell me any more specifics about 25 the conversations?</p>		<p>1 A. They told me that they didn't want anyone 2 allied with Alex Jones to acquire the assets and 3 continue his business.</p> <p>4 Q. Was that a factor that you took into 5 consideration at all?</p> <p>6 A. Not at all.</p> <p>7 Q. And what was the value of the joint bid that's 8 shown on Exhibit 4?</p> <p>9 A. Well, the purchase price is 1 million; and then 10 there's this additional consideration that you referred 11 to as the waiver.</p> <p>12 Q. Okay. Well, did you attribute any value to it?</p> <p>13 A. Yes.</p> <p>14 Q. So what value did you attribute to it?</p> <p>15 A. Not a specific amount.</p> <p>16 Q. Why not?</p> <p>17 A. Because at this point it was a concept, and I 18 knew it would have some value. And then at some point 19 we decided we were going to do another round of last and 20 best, so it wasn't really necessary to figure out 21 exactly how much value there was here because there was 22 going to be another round.</p> <p>23 Q. And as I appreciate it, the distributable 24 waiver here as set out here was designed so that 25 whatever was required so that the unsecured creditors</p>	

11:17:49-11:19:12	Page 61	11:20:16-11:21:50	Page 63
<p>1 other than the Connecticut families would receive one 2 dollar more than they would have received in the 3 otherwise highest qualified bid?</p> <p>4 A. Yes. That's my understanding of it.</p> <p>5 Q. Right. So basically -- so since you had a 6 qualified bid of a million-2, right, from my client, 7 right, wouldn't you then have valued this distributable 8 waiver at at least 200 and one dollar?</p> <p>9 A. No.</p> <p>10 Q. Well, that's what it's saying, right?</p> <p>11 A. No, I don't think so.</p> <p>12 Q. Well, I thought it's saying that we're going 13 to -- I thought we agreed that what it's saying is, 14 We're going to give you a waiver that has a value of one 15 dollar more than what the other bid was?</p> <p>16 A. One dollar more to the non-Connecticut 17 creditors of FSS.</p> <p>18 Q. Okay. Did you go through an analysis then as 19 to, you know, what they would get under one bid and what 20 they would get in another bid?</p> <p>21 A. Yes.</p> <p>22 Q. Before you did the final bid, you went through 23 that analysis?</p> <p>24 A. Not in the level of detail I did on the final 25 bid, but back of the envelope, yes.</p>		<p>1 A. That's right. I didn't.</p> <p>2 Q. Okay. And did you understand from this bid 3 that the Connecticut families were not going to be 4 acquiring any assets?</p> <p>5 A. That was my understanding, yes.</p> <p>6 Q. Did you understand that their -- the 7 Connecticut families' involvement here was simply to 8 provide an enhancement to The Onion's bid?</p> <p>9 A. Yes.</p> <p>10 Q. Let me ask you to look at page 3 of 6. This 11 time I'm going to the top.</p> <p>12 A. Which exhibit now?</p> <p>13 Q. Exhibit 4.</p> <p>14 A. Oh, the bid letter, I guess?</p> <p>15 Q. Yeah.</p> <p>16 A. Okay.</p> <p>17 Q. All right. So it talks about the cash 18 consideration and then future revenues on the bottom.</p> <p>19 A. Yes.</p> <p>20 Q. Did you give any consideration to this concept 21 of future revenues?</p> <p>22 A. No.</p> <p>23 Q. Okay. So in terms of valuing this bid, the 24 fact that there is a future revenue component did not 25 factor into your decision to qualify it one way or the</p>	
11:19:14-11:20:14	Page 62	11:21:55-11:23:47	Page 64
<p>1 Q. Okay.</p> <p>2 A. I thought through what it might be.</p> <p>3 Q. And what was your back of the envelope in terms 4 of what the value of this distributable proceeds waiver 5 was?</p> <p>6 A. That it had some value but that a million 7 dollars plus some value was enough to get into the next 8 round.</p> <p>9 Q. But you required a 10 percent deposit?</p> <p>10 A. I did.</p> <p>11 Q. But you didn't require any deposit on this?</p> <p>12 A. Right.</p> <p>13 Q. Why?</p> <p>14 A. Because it's not purchase money.</p> <p>15 Q. Well, it's being used to purchase, isn't it? I 16 don't understand what you mean by purchase money. You 17 mean it's not cash?</p> <p>18 A. Right. It's not -- it's a noncash component.</p> <p>19 We sort of talked about this before the break.</p> <p>20 Q. Right. But you also told me it had a cash 21 value.</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And so are you telling me now that you 24 didn't require them to put a deposit down on whatever 25 that cash value might be?</p>		<p>1 other?</p> <p>2 A. Right. I didn't give any value consideration 3 to it, no.</p> <p>4 Q. Right. And even in the final bid where it 5 includes the future revenues, you didn't give any 6 consideration or value to it?</p> <p>7 A. Right, I did not.</p> <p>8 Q. Not even -- completely disregarded from your 9 standpoint?</p> <p>10 A. Yes.</p> <p>11 Q. All right. So let's look at page 4 of 6.</p> <p>12 A. Okay.</p> <p>13 Q. All right. And so I'm looking at C(i). And 14 would you agree with me that's really where the 15 discussion is about what was intended from this 16 distributable waiver?</p> <p>17 A. Let me take a look.</p> <p>18 Q. Yeah. Just look at it. The intended benefit, 19 if you would.</p> <p>20 A. Okay.</p> <p>21 Q. Would you agree with me that's sort of the meat 22 of it? This is the value they're going to give, 23 explaining how it would work?</p> <p>24 A. Yes.</p> <p>25 Q. All right. And so let me make sure that you</p>	

11:23:50-11:25:00	Page 65	11:26:37-11:27:50	Page 67
<p>1 and I are on the same page -- I think we are -- that the 2 concept that is being proposed here is that the 3 Connecticut families would waive whatever rights they 4 had to a distribution from another qualified bid in a 5 sufficient amount so that the other unsecured creditors 6 would receive what they would have received under the 7 other qualified bid plus one dollar?</p> <p>8 A. Yes. I would have phrased it a little bit 9 differently but yes.</p> <p>10 Q. Why don't you phrase it in your language?</p> <p>11 A. Well, I think you said the money from the other 12 bid, but it would be the money from their bid that they 13 would have received and they're giving a portion of it 14 to the other creditors such that those creditors are 15 better off than they would have been under the 16 alternative bid.</p> <p>17 Q. By one dollar?</p> <p>18 A. Yes.</p> <p>19 Q. By one dollar. Okay. Right. So the money 20 would come from The Onion bid?</p> <p>21 A. Right.</p> <p>22 Q. But the comparison would be what they would 23 have gotten under the other highest qualified bid?</p> <p>24 A. Yes. That's how I understand it.</p> <p>25 Q. Okay. So just using numbers, using the</p>	<p>1 creditors of FSS, yes.</p> <p>2 Q. And in all of the time that you've been doing 3 this, being a trustee and bankruptcy practitioner, 4 you've never seen anything like this, right?</p> <p>5 A. Exactly like this, no.</p> <p>6 Q. Very unique. Would you agree?</p> <p>7 A. It is unique.</p> <p>8 Q. And would you agree that the reason why you 9 didn't -- that you decided not to move forward with the 10 online -- I mean the live auction, is because how unique 11 this waiver is?</p> <p>12 A. That's part of it.</p> <p>13 Q. Certainly it was a consideration for your 14 decision?</p> <p>15 A. Yes.</p> <p>16 Q. All right. Did you give any thought because of 17 how unique this was to go into the Court and asking the 18 Court to clarify whether or not this was something that 19 you could give credit to?</p> <p>20 A. Yes.</p> <p>21 Q. All right. Why didn't you do that?</p> <p>22 A. I didn't think I needed to.</p> <p>23 Q. Okay. And why is that?</p> <p>24 A. Because I think the decision here is one of my 25 business judgment, and I feel like I understand my</p>		
11:25:04-11:26:33	Page 66	11:27:54-11:29:47	Page 68
<p>1 \$1.2 million initial bid that my client made, if, for 2 instance, you were to determine that the other unsecured 3 creditors other than the Connecticut unsecured creditors 4 would receive from that \$1.2 million a hundred thousand 5 dollars, if that's the calculation and the determination 6 you made, your understanding is that what would happen 7 in this waiver is that the Connecticut families would 8 waive their rights to the million dollars that was being 9 offered by Onion sufficient so that the other unsecured 10 creditors would receive 100,000 and one dollar?</p> <p>11 A. Economically, yes, but not as a waiver. More 12 as like a gift of the proceeds they would have gotten to 13 those other creditors is how I would interpret it. That 14 those proceeds that they're entitled to would be 15 assigned to me to then be given over to the other 16 creditors. That's how I thought about it but yes.</p> <p>17 You'd figure out what the other unsecureds 18 would get under the alternative bid, add a dollar, and 19 then they'd contribute cash from their procedures to get 20 to that number.</p> <p>21 Q. Okay.</p> <p>22 A. I think we're saying the same thing.</p> <p>23 Q. I just want to make sure that we're on the same 24 page. So it's basically a dollar more of value?</p> <p>25 A. Right, for the non-Connecticut plaintiffs -- or</p>	<p>1 fiduciary obligation to the creditors. And I felt like 2 it was pretty clear that this added value to the 3 creditors, and that that was a reasonable decision.</p> <p>4 Q. Would you agree that part of your fiduciary 5 duty is to follow the sales order, correct?</p> <p>6 A. Sure, all orders.</p> <p>7 Q. Right. And part of your fiduciary duty is to 8 make sure that the bidding procedures that are provided 9 to qualified bidders are followed, correct?</p> <p>10 A. Yes.</p> <p>11 Q. When you first received Exhibit 4 and you 12 reviewed it, did you understand the waiver?</p> <p>13 A. Yes, I think so.</p> <p>14 Q. Did you seek to have any clarification 15 discussions with the joint bidders?</p> <p>16 A. On what it meant? I don't think so, no.</p> <p>17 Q. Okay. Well, did you have any discussions with 18 anybody representing the Connecticut families or 19 The Onion after you received Exhibit 4?</p> <p>20 A. Yes.</p> <p>21 Q. Who?</p> <p>22 A. I think I got a text message from Kyle Kimpler 23 asking for a call shortly after the bids came in.</p> <p>24 Q. Okay. And did you speak to Mr. Kimpler?</p> <p>25 A. Eventually, yes, but not in response to that</p>		

11:29:50-11:31:23	Page 69	11:32:57-11:34:22	Page 71
<p>1 text.</p> <p>2 Q. All right. So I'm interested in the timeline</p> <p>3 between -- let's look at the date of this thing. The</p> <p>4 date, I believe, is November 8th, right, is when you</p> <p>5 received the bid from the joint bidders, right?</p> <p>6 A. Yes. I think that was a Friday. Is that</p> <p>7 right?</p> <p>8 Q. I think it was, too. And then on Monday is</p> <p>9 when I believe you determined that you would not go</p> <p>10 forward with the online auction?</p> <p>11 A. Right. Monday is when we told the two</p> <p>12 qualified bidders that they were qualified and how we</p> <p>13 were going to proceed.</p> <p>14 Q. Okay. So between the time you received</p> <p>15 Exhibit 4 and you told the qualified bidders how you</p> <p>16 were going to proceed on Monday, the 11th, did you speak</p> <p>17 to anybody with The Onion or the Connecticut families?</p> <p>18 A. I spoke to Mr. Kimpler on a single phone call,</p> <p>19 and that's it.</p> <p>20 Q. Okay. And what was that call about?</p> <p>21 A. We were discussing whether there was progress</p> <p>22 on ongoing negotiations between the Connecticut and the</p> <p>23 Texas families about how to split the proceeds of the</p> <p>24 sale and how to divide up -- or rather, which portion of</p> <p>25 the claims pool they would ultimately have.</p>		<p>1 Q. And is that a subject that you talked to</p> <p>2 Mr. Kimpler about as well?</p> <p>3 A. Yes.</p> <p>4 Q. The attorney representing Texas, what's his</p> <p>5 name again?</p> <p>6 A. Avi Moshenberg.</p> <p>7 Q. Moshenberg. Okay. Mr. Moshenberg, was he</p> <p>8 requesting an agreement from you as well?</p> <p>9 MS. DRENGA: I'm going to object to form</p> <p>10 on behalf of the Texas plaintiffs.</p> <p>11 A. I'm sorry. Could you say it again?</p> <p>12 BY MR. CICACK:</p> <p>13 Q. Yeah, sure. Mr. Moshenberg, did he also ask</p> <p>14 you to agree not to sell any of the assets to a party</p> <p>15 that the Texas families did not approve of?</p> <p>16 A. I don't know if he said it.</p> <p>17 I think she's going to renew her</p> <p>18 objection.</p> <p>19 MS. DRENGA: I'm renewing it.</p> <p>20 A. Okay. I don't remember the exact word or how</p> <p>21 it came up. But I know that Texas had wanted me to</p> <p>22 agree to that as part of their proposed agreement with</p> <p>23 Connecticut.</p> <p>24 BY MR. CICACK:</p> <p>25 Q. And did you ever see any proposed agreement</p>	
11:31:26-11:32:47	Page 70	11:34:30-11:36:07	Page 72
<p>1 Those discussions have been going on for</p> <p>2 months.</p> <p>3 Q. Do you know, are those discussions still</p> <p>4 ongoing?</p> <p>5 A. I believe they are.</p> <p>6 Q. Do you know if there's been any resolution?</p> <p>7 A. I don't believe so. If there is, I'm not aware</p> <p>8 of it.</p> <p>9 Q. Right. I think you mentioned that you talked</p> <p>10 to the attorney for the Texas families about the</p> <p>11 possibility of the Texas families also using their</p> <p>12 claim?</p> <p>13 A. No. I talked to Mr. Moshenberg, and he was --</p> <p>14 we had talked generally about the families influencing</p> <p>15 or having some sort of veto over what would happen in</p> <p>16 the auction.</p> <p>17 Q. And what was the substance of that call?</p> <p>18 A. There were a few of them over time, but the</p> <p>19 substance was there was a potential agreement between</p> <p>20 Connecticut and Texas on how they would split the</p> <p>21 proceeds among them. And that had as a requirement that</p> <p>22 I as trustee would participate in that agreement and</p> <p>23 only allow the sale of these assets to a bidder that</p> <p>24 Connecticut approved of. And I refused to do that, and</p> <p>25 I rejected that request.</p>		<p>1 between Connecticut and the Texas families in writing?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you know what the status of it is</p> <p>4 now?</p> <p>5 A. No.</p> <p>6 Q. As far as you know, it's still being</p> <p>7 negotiated?</p> <p>8 A. I don't know what the status of it is.</p> <p>9 Q. Okay. And did that agreement contemplate that</p> <p>10 you would be a party to it?</p> <p>11 A. Yes.</p> <p>12 Q. And did that agreement set out that you would</p> <p>13 agree not to sell the assets to any party that the Texas</p> <p>14 families and the Connecticut families didn't approve?</p> <p>15 A. I think it was just the Connecticut families,</p> <p>16 but my understanding is that that was part of what they</p> <p>17 were proposing for me to agree to; and I said no.</p> <p>18 Q. So when you received Exhibit 4 and saw that,</p> <p>19 the distributable proceeds waiver concept, when did you</p> <p>20 decide that it would be something that you would at</p> <p>21 least consider?</p> <p>22 A. Probably shortly upon reading it.</p> <p>23 Q. And why did you not disclose to the other</p> <p>24 qualified bidder that you were willing to consider this</p> <p>25 waiver concept?</p>	

11:36:10-11:37:40	Page 73	11:40:02-11:41:33	Page 75
<p>1 A. For the same reason I didn't tell the other bidder what the bid was.</p> <p>3 Q. Well, I'm not suggesting you tell them the amount. But the concept itself --</p> <p>5 A. Oh, I see what you're saying.</p> <p>6 Q. -- it's not cash, right? I mean, why didn't you disclose to the qualified bidders that this was a concept you were at least considering?</p> <p>9 A. Well, I definitely disclosed that I was considering noncash options. But there's a couple reasons why I didn't disclose exactly what the noncash was. And one of them is the whole point of a sealed bid auction is each bidder has a little bit of anxiety that they're going to be outdone. And to the extent you don't know what's in the other bid, that would put pressure on you to bid more. That's sort of maximizing the benefit of the sealed bid process.</p> <p>18 And another aspect was the way their waiver works is it's making use of the fact that they have an unsecured claim against FSS, and that's something that your client didn't have. So telling you about it wouldn't create any kind of apples-to-apples bidding along those lines.</p> <p>24 So that was sort of the other reason not to tell you exactly what the other bid was.</p>		<p>1 A. Others in his firm.</p> <p>2 Q. Okay.</p> <p>3 A. Also Erin Jones.</p> <p>4 Q. And did you rely on any written legal advice?</p> <p>5 A. No.</p> <p>6 Q. Okay. Did you do any due diligence or investigation to determine whether a waiver such as this was ever used in any bankruptcy sale anywhere in the United States ever?</p> <p>10 A. I'm sorry. Say that again.</p> <p>11 Q. Yep. I'm just trying to figure out did you do any investigation, any research, any due diligence to determine whether the concept that was being proposed here had ever been done before?</p> <p>15 A. Yes.</p> <p>16 Q. Did you find anything?</p> <p>17 A. Nothing quite like this, no.</p> <p>18 Q. Did you find anything that you thought was close?</p> <p>20 A. Yes.</p> <p>21 Q. What?</p> <p>22 A. There were a few cases here and there where there were claims waivers, not structured like this but where courts upheld the business judgment of a trustee considering that.</p>	
11:37:59-11:40:02	Page 74	11:41:37-11:43:27	Page 76
<p>1 Q. Would you agree that the initial bid made by the joint bidders was not a specific dollar amount?</p> <p>3 A. I mean, the purchase cash amount is a specific dollar amount; and the amount of the distributable proceeds waiver is calculable. But what exact dollar amount it would have been, no, I don't know.</p> <p>7 Q. Okay. So through the time you received the initial bid from the joint bidders through the time that you received their highest and best bid on November 13th, did you have any discussions that we haven't talked about with anybody representing The Onion or representing the Connecticut families?</p> <p>13 A. No. It's just that one phone call with Mr. Kimpler.</p> <p>15 Q. Okay.</p> <p>16 A. During that time period, yeah.</p> <p>17 Q. Okay. So what did you do as the trustee to determine that you were willing to accept this waiver as currency? Did you do any due diligence? Did you -- you know, what did you do to get yourself comfortable that you would accept it?</p> <p>22 A. I consulted with my counsel.</p> <p>23 Q. Mr. Wolfshohl?</p> <p>24 A. Yes.</p> <p>25 Q. Anybody else?</p>		<p>1 There are plenty of cases that deal with noncash consideration, assumed liabilities, things like that which add value to a bid. That's what comes to mind. Maybe analogous situations but not exactly this, no.</p> <p>6 Q. Did you attempt to determine whether or not Global Tetrahedron would increase the cash portion of its bid if you rejected the waiver concept?</p> <p>9 A. Essentially yes.</p> <p>10 Q. Tell me about that.</p> <p>11 A. Well, it was the way we did the second bid. We said, We want your highest and best, which I think implies that they should bid more cash if they are willing to. And I also asked for them -- all bidders to make any noncash components as specific and noncontingent as possible so that I could evaluate them.</p> <p>17 Q. You didn't have any conversations with anybody at Global Tetrahedron?</p> <p>19 A. About the bids, no.</p> <p>20 Q. Or asking them if they would be willing to increase their cash portion so that it was -- it would make up for the distributable waiver?</p> <p>23 A. Yeah. I didn't, no.</p> <p>24 Q. Okay. All right. Did you give any consideration to -- well, let me ask you this.</p>	

11:43:33-11:45:30	Page 77	11:47:31-11:48:49	Page 79
<p>1 When over the weekend did you decide not 2 to have a live auction?</p> <p>3 A. I'm not sure exactly when, but it was some 4 point over that weekend. But there were discussions 5 with, you know, my advisors continuously through that 6 process. I don't know when exactly the inflection point 7 was reached and I decided not to do a live auction.</p> <p>8 Q. Okay. Did you give any consideration to what a 9 live auction would look like with one bidder bidding 10 cash and another bidder bidding cash and a waiver?</p> <p>11 A. Yes.</p> <p>12 Q. What did you visualize that looking like?</p> <p>13 A. We thought it would be chaotic.</p> <p>14 Q. Why?</p> <p>15 A. Well, because the cash amounts might change. 16 The nature of the waiver and how it's calculated might 17 change. And also because the different -- the bidders 18 had bid initially on different lots.</p> <p>19 So trying to game out how to set up 20 apples-to-apples live bidding on different things, we 21 went through lots of different permutations and 22 scenarios and it did not seem workable.</p> <p>23 Q. And would it be fair to say that it wasn't 24 workable because of the waiver?</p> <p>25 A. It's not workable because of all of those</p>		<p>1 judgments are subject to appeal?</p> <p>2 A. Yes.</p> <p>3 Q. And those appeals are ongoing?</p> <p>4 A. That's my understanding.</p> <p>5 Q. Okay. And so you understand that there's a 6 chance that those judgments could be vacated, all or a 7 portion of them?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So did you do any due diligence to reach 10 a conclusion of how likely that is?</p> <p>11 A. Yes.</p> <p>12 Q. What did you do?</p> <p>13 A. Well, I -- (Small interruption)</p> <p>15 A. Go ahead again.</p> <p>16 BY MR. CICACK:</p> <p>17 Q. What due diligence did you do to come to your 18 conclusion as to how likely the appeals would be 19 successful?</p> <p>20 A. Well, I didn't analyze the likelihood of 21 success of the appeals in any detail. What I did was I 22 looked at the claims register, saw that the claims were 23 based on judgments in fixed amounts. I noticed that no 24 one had objected to those claims even though the case 25 had been pending for a year and a half.</p>	
11:45:32-11:47:29	Page 78	11:48:51-11:50:36	Page 80
<p>1 things.</p> <p>2 Q. Well, if -- let's assume that Global 3 Tetrahedron did not have a waiver and all it bid was 4 money. Would you have gone forward with the live 5 auction?</p> <p>6 A. I don't know. I think it would have depended 7 on the lots and the bids. We would have gone through it 8 and thought about it differently. I don't know what the 9 decision would have been on that.</p> <p>10 Q. In making your decision not to move forward 11 with the live auction, before you made that decision did 12 you go back and look at the sale order thoroughly?</p> <p>13 A. I remember reviewing the sale order again, yes.</p> <p>14 Q. Now, when you considered this waiver, did you 15 do anything internally to value the Connecticut 16 families' claim?</p> <p>17 A. Yes.</p> <p>18 Q. What did you do?</p> <p>19 A. Referred to the claims register in the FSS 20 case. I mean, that was primarily it.</p> <p>21 Q. Okay. You know that their claim is based on a 22 judgment, correct?</p> <p>23 A. Yes, that's my understanding. Several 24 judgments.</p> <p>25 Q. Several judgments. And you know those</p>		<p>1 And I concluded that it was unlikely that 2 the appeal would make a significant impact or a 3 significant-enough impact on the value of the 4 Connecticut claims to alter my judgment.</p> <p>5 Q. Okay. Did you realize that Alex Jones had 6 filed an objection to the claim?</p> <p>7 A. Against FSS?</p> <p>8 Q. No. That Alex Jones filed a claim -- an 9 objection against the Connecticut families.</p> <p>10 A. I think we're talking about different claims.</p> <p>11 There are claims against FSS and there are claims 12 against Alex Jones personally or his estate. I'm 13 talking about the FSS claims.</p> <p>14 Q. Well, they're the same claims, right?</p> <p>15 A. No. They have different payees. I mean, there 16 are different responsible parties.</p> <p>17 Q. But they're joint and several, right?</p> <p>18 A. That could be. (Murray Exhibits 5 and 6 were marked for identification.)</p> <p>21 BY MR. CICACK:</p> <p>22 Q. All right. If we could, let's turn to 23 Exhibit 6.</p> <p>24 A. Okay. That's the big one there? Oh, no.</p> <p>25 Q. No, I don't think it's --</p>	

11:50:36-11:51:58	Page 81	11:53:49-11:55:13	Page 83
<p>1 A. I was thinking of 9, sorry.</p> <p>2 Q. We already talked about 9. I'm hoping not to 3 go back to it.</p> <p>4 All right. So these were what I would 5 call updated bid procedures, correct?</p> <p>6 A. Sure, yes.</p> <p>7 Q. And these were the bid procedures that were 8 prepared, I assume, over the weekend after you received 9 the initial bids?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And who prepared these?</p> <p>12 A. It was a combination of people. It was the 13 same ones who prepared the initial bid ones, the 14 auctioneer, Jeff Tanenbaum, and then also my counsel was 15 involved in it. I also reviewed and commented on it.</p> <p>16 Q. Okay. And ultimately you approved those?</p> <p>17 A. I did.</p> <p>18 Q. Did either of the qualified bidders have any 19 input in these bid procedures?</p> <p>20 A. No.</p> <p>21 Q. And were they prepared over the weekend?</p> <p>22 A. They were definitely finalized over the 23 weekend. I don't know if there was any kind of draft of 24 this before.</p> <p>25 Q. Well, was there any draft like this before you</p>		<p>1 A. Yes.</p> <p>2 Q. Okay. Now, the initial bid that was made by 3 the joint bidders included a waiver that was dependent 4 on what the other qualified bid was?</p> <p>5 A. Yeah.</p> <p>6 Q. Right? All right. So the amount of the waiver 7 was contingent on something else?</p> <p>8 A. It depended on something else, yes.</p> <p>9 Q. All right. So you like the word "dependent" 10 versus "contingent"?</p> <p>11 A. Well, yeah. I think of it as being a little 12 bit different but yeah.</p> <p>13 Q. And also the waiver that was in the initial bid 14 also included a formula, did it not?</p> <p>15 MR. WOLFSHOHL: Objection, form.</p> <p>16 A. Yes.</p> <p>17 BY MR. CICACK:</p> <p>18 Q. Okay. And so by these bid instructions here 19 were you attempting to communicate to the joint bidders 20 that the concept of the distributable waiver, as set 21 forth in the initial bid, needed to be changed in some 22 way?</p> <p>23 A. I was communicating that I wanted whatever 24 noncash components anyone wanted to include would be as 25 specific as possible so I would have an easier time</p>	
11:52:02-11:53:49	Page 82	11:55:17-11:56:43	Page 84
<p>1 received the initial bidding, the bids?</p> <p>2 A. No.</p> <p>3 Q. Okay. And it's your belief that these 4 additional bid procedures or instructions were 5 authorized by the sales order, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And is it your understanding that these bid 8 procedures, bid instructions are accurate?</p> <p>9 A. I'm not sure what you mean by that. They're 10 bid procedures.</p> <p>11 Q. All right. Well, can the qualified bidders 12 rely on them?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. You're not attempting to mislead anybody 15 here, right, in these bid instructions?</p> <p>16 A. No.</p> <p>17 Q. Well, let's look at the second paragraph. Now, 18 it says here -- let's go down to the bottom, where it 19 says that "Any bids that include components of 20 consideration apart from the cash purchase amounts 21 should quantify the amounts of such consideration in 22 specific dollar amounts with as much specificity as 23 possible and avoiding references to any formulas or 24 contingencies."</p> <p>25 Do you see that?</p>		<p>1 evaluating them.</p> <p>2 Q. The one that was in the initial bid by the 3 joint bidders included a formula, included a 4 contingency?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 A. Well, I think I said dependency but yeah.</p> <p>8 Q. Did you give consideration to going back to the 9 Court to ask the Court to approve these additional bid 10 instructions?</p> <p>11 A. No.</p> <p>12 (Murray Exhibit 7 was marked for 13 identification.)</p> <p>14 BY MR. CICACK:</p> <p>15 Q. All right. Let's go to Exhibit 7, please.</p> <p>16 A. This is your final bid?</p> <p>17 Q. This is First United's final bid.</p> <p>18 A. Okay.</p> <p>19 Q. All right. And you received this bid, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And did you understand it?</p> <p>22 A. Yes.</p> <p>23 Q. It's not very complicated, right?</p> <p>24 A. There's some complexity, but I understand it.</p> <p>25 Q. Well, you understood that First United was</p>	

11:56:46-11:58:43	Page 85	12:01:08-12:02:37	Page 87
<p>1 willing to pay \$3.5 million for all of the assets that 2 were for sale?</p> <p>3 A. Yes.</p> <p>4 Q. All right. No formula, no contingencies, just 5 straight-up cash, right? You understood that?</p> <p>6 A. Yes.</p> <p>7 Q. Now, this bid package included lot 4, the 8 contested domain names. Are the contested domain names 9 being sold now?</p> <p>10 A. No.</p> <p>11 Q. When did you take lot 4 out of the sale?</p> <p>12 A. I'm not sure exactly when.</p> <p>13 Q. I've seen a limited objection by X, formerly 14 Twitter, about selling FSS's Twitter account.</p> <p>15 A. Yes.</p> <p>16 Q. Is the X account, has that been omitted from 17 the sale now?</p> <p>18 A. There are discussions around that. I don't 19 think that there is anything decided on that.</p> <p>20 Q. Okay. And the discussions that you're 21 referring to are between whom?</p> <p>22 A. These are discussions between me, X and the 23 successful bidders, the joint bidders, about how 24 potentially to resolve the limited objection.</p> <p>25 Oh, and you. But you didn't respond.</p>		<p>1 Q. Let me ask you to look at the letter that's 2 attached to it. And if you could go to page 4 of 6 on 3 the top, you know, the court document portion.</p> <p>4 A. I got it.</p> <p>5 Q. All right. The cash consideration was 6 increased by \$750,000, right?</p> <p>7 A. Yes.</p> <p>8 Q. Went from 1 million to 1,750,000?</p> <p>9 A. Yes.</p> <p>10 Q. First United's bid went from 1.2 million to 11 3.5 million, correct?</p> <p>12 A. Yes.</p> <p>13 Q. An increase of 2.3 million in cash?</p> <p>14 A. On the First United bid, yes.</p> <p>15 Q. This letter also describes a distributable 16 proceeds waiver, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And if you go to the next page, it describes 19 future revenues?</p> <p>20 A. Yes.</p> <p>21 Q. Now, the future revenues is not something that 22 you considered at all, right?</p> <p>23 A. That's right.</p> <p>24 Q. No value, no consideration. From your 25 standpoint it had no impact on anything that you were</p>	
11:58:49-12:00:56	Page 86	12:02:42-12:04:15	Page 88
<p>1 Q. Yeah. There was an e-mail. I'm not sure how 2 to respond, but we'll see.</p> <p>3 All right. And this bid that is 4 Exhibit 7, you accepted this bid as the backup bid, 5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And it remains the backup bid today?</p> <p>8 A. Yes.</p> <p>9 Q. Despite the fact that the Connecticut families' 10 lawyers have urged you to reject it, haven't they?</p> <p>11 A. Yes.</p> <p>12 Q. And you've told them no?</p> <p>13 A. Yeah. I've not -- yes, you're right. I told 14 them no.</p> <p>15 Q. If the Court does not approve the sale to the 16 joint bidders, do you have any objection selling the 17 assets to First United?</p> <p>18 A. No.</p> <p>19 Q. All right. Let's look, if we can, at 20 Exhibit 8.</p> <p>21 A. Okay. Got it.</p> <p>22 Q. And Exhibit 8 is the bid and letter that was 23 from the joint bidders that you accepted as the 24 successful bid, correct?</p> <p>25 A. Yes.</p>		<p>1 doing?</p> <p>2 A. Right. It didn't impact my decision on which 3 bid was better.</p> <p>4 Q. Right. And you didn't give it any value at 5 all?</p> <p>6 A. Right.</p> <p>7 Q. Okay. Now, let's look at the distributable 8 proceeds waiver. Going to page 4 of 5.</p> <p>9 A. 4 of 6?</p> <p>10 Q. 4 of 6. So I'd like for you to read -- it 11 starts with "as illustrated above." And just read that 12 entire paragraph going onto the next page.</p> <p>13 A. Out loud?</p> <p>14 Q. No. Just because I want to ask you some 15 questions about it.</p> <p>16 A. Okay.</p> <p>17 Q. So as I understand this distributable waiver, 18 just like the one that was in the initial bid, which was 19 designed to give the non-Connecticut unsecured creditors 20 a dollar more than they would otherwise get, this 21 distributable waiver says, We've now increased that one 22 dollar to 100,000 more?</p> <p>23 A. Yes.</p> <p>24 Q. All right. Have you done anything to determine 25 what that distributable waiver amount would have to be</p>	

12:04:21-12:05:52	Page 89	12:56:14-12:57:51	Page 91
<p>1 in order to get the -- in order for the non-Connecticut 2 families to recover a hundred thousand dollars more than 3 they would have if you had accepted First United's bid?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And what is that?</p> <p>6 A. So I took First United's bid.</p> <p>7 Q. Right.</p> <p>8 A. And estimated from that how much cash would 9 flow through to FSS unsecureds and of that portion, how 10 much non-Connecticut would get, added a hundred 11 thousand, and then went back over to the joint bidders' 12 bid, with their cash amount, how much net would be 13 available for unsecured creditors, and would Connecticut 14 get enough of that cash to cover the first amount.</p> <p>15 Q. Okay. When you calculated how much the 16 non-Connecticut families would receive from the 17 \$3.5 million, what was the number that you came to?</p> <p>18 A. I don't remember it exactly. It's on a couple 19 of the spreadsheets you showed me earlier.</p> <p>20 Q. All right.</p> <p>21 MR. CICACK: This may be a good time then 22 to maybe -- maybe we can make these exhibits. I just 23 didn't have time to make copies last night.</p> <p>24 Can we take a break and maybe get some 25 copies of these?</p>		<p>1 that Mr. Tanenbaum prepared.</p> <p>2 Q. Okay. Have you gone through Exhibits 14 and 15 3 with Mr. Tanenbaum?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Can you just kind of walk us through 6 Exhibit 14 and explain to us what you understand 14 to 7 be?</p> <p>8 A. I'm trying to figure out the difference between 9 14 and 15 because I'm not sure what was going on there.</p> <p>10 Q. Well, I think the difference is that --</p> <p>11 A. I recognize what's going on.</p> <p>12 Q. Okay, good. I was hoping you'd help me there, 13 too.</p> <p>14 A. Exhibit 15 is an earlier version of 14.</p> <p>15 Q. Okay.</p> <p>16 A. But what I think Mr. Tanenbaum was trying to do 17 on this spreadsheet is compare the result for the 18 non-Connecticut creditors under two different scenarios, 19 the backup bid and the successful bid, the joint bid.</p> <p>20 And the logic of this is you start with 21 the cash that would come in from a sale under either 22 bid, net out administrative costs, and then of the net 23 available for unsecureds, figure out how much would go 24 to the non-Connecticut creditors.</p> <p>25 And in this version, this is using very</p>	
12:05:52-12:56:07	Page 90	12:57:53-12:59:26	Page 92
<p>1 MR. WOLFSHOHL: Yeah, sure.</p> <p>2 MR. CICACK: Are you okay taking a quick 3 break?</p> <p>4 THE WITNESS: That's fine.</p> <p>5 THE VIDEOGRAPHER: The time is 12:05 p.m.</p> <p>6 We're off the record.</p> <p>7 (Luncheon recess)</p> <p>8 (Murray Exhibits 14 through 16 were marked 9 for identification.)</p> <p>10 THE VIDEOGRAPHER: The time is 12:54 p.m.</p> <p>11 Central Time. We are back on the record.</p> <p>12 BY MR. CICACK:</p> <p>13 Q. Hi, Mr. Murray. I have put before you what 14 we've marked as Exhibits 14, 15 and 16. Right before we 15 took a break you had said that there were some 16 spreadsheets or calculations you put together to 17 determine what the actual amount of the bid was for the 18 joint bidders?</p> <p>19 A. Yes.</p> <p>20 Q. And these were documents that were produced to 21 us, I think, yesterday; and before I go through them I 22 want to make sure. Are these the calculations that you 23 were talking about?</p> <p>24 A. So Exhibit 16 is the spreadsheets I was talking 25 about. Exhibits 14 and 15 I believe are spreadsheets</p>		<p>1 conservative assumptions on costs -- and by 2 conservative, I mean would tend to favor the First 3 United in the comparison -- and the percentage of the 4 claims pool held by Connecticut.</p> <p>5 Q. That's the 25/75 break?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 A. And so under the backup bid you end up with the 9 \$687,500 that would make it to non-Connecticut creditors 10 of FSS under that bid. But under the joint bid analysis 11 they would receive a million dollars, which is 12 significantly higher.</p> <p>13 Q. Right. That's what I thought. But their bid 14 was that they would provide a waiver up to the amount 15 needed to make it a hundred thousand dollars more?</p> <p>16 A. So it describes the mechanism of the waiver 17 that way, I agree with you. But we asked for highest 18 and best bids and their bid was a cash equivalent 19 7 million.</p> <p>20 Q. Have you talked to them about that?</p> <p>21 A. Yes.</p> <p>22 Q. So are they -- and what do they say about this 23 provision, this paragraph that talks about a hundred 24 thousand dollars more? They like don't -- disregard it?</p> <p>25 Doesn't mean anything?</p>	

12:59:28-13:00:25	Page 93	13:01:30-13:02:20	Page 95
<p>1 A. I can't speak for them.</p> <p>2 Q. But what did they tell you? I mean that's what</p> <p>3 it says, right?</p> <p>4 A. They told me that they believe it should only</p> <p>5 be a hundred thousand. I believe it should be more</p> <p>6 because they asked for last and best. They gave</p> <p>7 effectively a range. And I think if I say, Give me your</p> <p>8 last and best offer and they say, Oh, I'll pay between 4</p> <p>9 and 6, I'll take 6 and say thank you.</p> <p>10 Q. Okay.</p> <p>11 A. And in subsequent discussions my understanding</p> <p>12 is they agree with my interpretation of their final bid.</p> <p>13 Q. But they told you that they intended it to be</p> <p>14 only a hundred thousand more?</p> <p>15 A. Yes.</p> <p>16 Q. That's what they told you?</p> <p>17 A. They told me that they think that their bid is</p> <p>18 that, yes.</p> <p>19 Q. Well, they're the ones that prepared it. So</p> <p>20 that would have to be their intent then?</p> <p>21 A. Yeah.</p> <p>22 Q. So the Connecticut family representative, who</p> <p>23 was this? Mr. Kimpler?</p> <p>24 A. In those discussions it was -- a few of their</p> <p>25 lawyers were on that call but I think Mr. Kimpler.</p>	<p>1 a speech.</p> <p>2 MR. PATERSON: Well, it depends on the</p> <p>3 timing of this conversation. If it's referencing</p> <p>4 something after the sale motion, the TRO complaint by</p> <p>5 Mr. Jones was filed, then it's absolutely a privilege</p> <p>6 objection.</p> <p>7 MR. BROOCKS: Then make your privilege</p> <p>8 objection in the proper way, sir.</p> <p>9 MR. PATERSON: Okay. Then I'll ask the</p> <p>10 witness --</p> <p>11 (Cross talk)</p> <p>12 MR. BROOCKS: -- not to answer?</p> <p>13 MR. PATERSON: -- not to answer that</p> <p>14 question on the basis of privilege to the extent the</p> <p>15 conversation with the Connecticut plaintiffs'</p> <p>16 representative is after the sale motion was filed.</p> <p>17 And by that I mean, just to be more</p> <p>18 precise, after the complaint by Mr. Jones was filed</p> <p>19 seeking a TRO.</p> <p>20 BY MR. CICACK:</p> <p>21 Q. Were these conversations before that?</p> <p>22 A. No. They were after that.</p> <p>23 MR. BROOCKS: Well, thank you.</p> <p>24 BY MR. CICACK:</p> <p>25 Q. All right. So the Connecticut families</p>		
13:00:28-13:01:29	Page 94	13:02:26-13:03:17	Page 96
<p>1 Q. Any of the Connecticut families on that call?</p> <p>2 A. Like family members?</p> <p>3 Q. Yeah.</p> <p>4 A. No, I don't think so.</p> <p>5 Q. I mean, they're the ones that are making the</p> <p>6 proposal, not the lawyers, right? Correct?</p> <p>7 A. Making the proposal? It's the proposal of the</p> <p>8 joint bidders but it's delivered by the counsel who</p> <p>9 describe it.</p> <p>10 Q. All right. So counsel for the Connecticut</p> <p>11 families told you that they thought that their bid was</p> <p>12 of a distributable waiver that would secure the other</p> <p>13 unsecured creditors a hundred thousand dollars more?</p> <p>14 A. Yes.</p> <p>15 MR. PATERSON: I'll object at this time</p> <p>16 and just ask if we could have some questioning --</p> <p>17 MR. BROOCKS: What is --</p> <p>18 MR. PATERSON: -- a common interest that</p> <p>19 comes into play.</p> <p>20 MR. BROOCKS: Hang on. If you're going to</p> <p>21 make a privilege objection, then make it, but none of</p> <p>22 this speaking bullshit.</p> <p>23 MR. PATERSON: Well, it is a privilege</p> <p>24 objection.</p> <p>25 MR. BROOCKS: Then make it and quit making</p>	<p>1 communicated -- through their lawyers communicated to</p> <p>2 you that they believed that their bid was that you would</p> <p>3 receive -- that the other unsecured creditors would</p> <p>4 receive a hundred thousand dollars more under their</p> <p>5 waiver than they would receive under the FUAC bid?</p> <p>6 MR. PATERSON: Again, I'm going to object</p> <p>7 and request that the witness not answer to the extent</p> <p>8 that this is after the Connecticut families were</p> <p>9 announced as the winning bidder.</p> <p>10 MR. WOLFSHOHL: It's their privilege, too.</p> <p>11 MR. BROOCKS: How is it their privilege?</p> <p>12 MR. WOLFSHOHL: Because it's a joint</p> <p>13 privilege.</p> <p>14 MR. PATERSON: Common interest.</p> <p>15 MR. WOLFSHOHL: Common interest privilege.</p> <p>16 MR. BROOCKS: Well, you've got to both</p> <p>17 say, We have an agreement to that effect.</p> <p>18 MR. WOLFSHOHL: We do have an agreement to</p> <p>19 that effect, yes.</p> <p>20 MR. CICACK: Is it in writing?</p> <p>21 MR. WOLFSHOHL: No.</p> <p>22 MR. BROOCKS: When was the agreement</p> <p>23 reached?</p> <p>24 MR. WOLFSHOHL: The agreement was reached</p> <p>25 whenever you sued us.</p>		

13:03:18-13:04:05	Page 97	13:05:40-13:06:54	Page 99
<p>1 MR. BROOCKS: The joint -- was there just 2 an assumed or was there any conversation -- 3 MR. WOLFSHOHL: No. There was a 4 discussion about it. 5 MR. BROOCKS: When was that? 6 MR. WOLFSHOHL: It was after the -- it was 7 when -- I believe the first discussion of it was when 8 Mr. Cicack filed the emergency request for a status 9 conference. 10 MR. BROOCKS: And what happened then? I'm 11 trying to get a feel. I want to flesh it out for the 12 Court. Did y'all have a conversation about it? 13 MR. WOLFSHOHL: Yeah, a conversation about 14 it. That's it. 15 MR. BROOCKS: Who was a part of the 16 conversation? 17 MR. WOLFSHOHL: The lawyers that were 18 involved in the conversation. 19 MR. BROOCKS: What was agreed? 20 MR. WOLFSHOHL: It was agreed that we were 21 having communications based on a common interest 22 privilege. That's what was agreed. That was it. 23 BY MR. CICACK: 24 Q. You would agree with me that their bid says 25 that the distributable proceeds waiver is intended so</p>	<p>1 from 1 to 100,000, yes. 2 Q. Right. Okay. But because they put \$7 million 3 on the front page, you are disregarding that entire 4 paragraph? 5 A. I'm not disregarding it. I'm trying to make 6 sense of what I interpret to be somewhat contradictory 7 statements in the bid. 8 Q. So before you accepted this bid, did you seek 9 clarification? 10 A. No. 11 Q. Why not? By your own testimony it's 12 contradictory. Why didn't you seek clarification? 13 A. Because under any of the possible 14 interpretations, the bid was significantly better than 15 yours. 16 Q. Right. But under one interpretation it's 17 contingent, is it not? 18 A. No. 19 Q. Sure it is. If it's a hundred thousand -- if 20 you were to interpret this that you would -- that the 21 unsecured creditors would receive \$100,000 more than 22 what they would receive under the First United bid, then 23 this bid is contingent on what the First United bid was, 24 the amount. 25 A. Okay. Yes, I guess in that sense. I view</p>		
13:04:11-13:05:37	Page 98	13:06:57-13:07:54	Page 100
<p>1 that the other unsecured creditors would receive a 2 hundred thousand dollars more, and they even say an 3 increase from the one dollar amount in the initial bid? 4 MR. WOLFSHOHL: Objection to form. 5 (Murray Exhibit 8 was marked for 6 identification.) 7 BY MR. CICACK: 8 Q. Let's look at Exhibit 8. 9 A. Okay. 10 Q. So page 5 of 6. All right? It says right 11 there, "The distributable proceeds waiver amount is 12 revised under this final bid so that it shall equal an 13 amount necessary for other unsecured creditors of FSS, 14 including the Texas families, to recover 100,000 more 15 (an increase from one dollar amount set forth in the 16 initial bid) in the aggregate that they would recover 17 from the sale of the acquired assets to the otherwise 18 highest qualified bidder," right? 19 That's what it says? 20 A. That's what that sentence says, yes. 21 Q. Right. So isn't that communicating to you that 22 what they're doing is the one dollar more offer that 23 they made in the initial bid, they're now increasing 24 that to \$100,000 more? 25 A. Right. The number in this sentence increased</p>	<p>1 contingent as it's a bid depending on whether something 2 else happens, not that the amount changes based on 3 something else. 4 Q. And it's also a formula, right? You've got to 5 do a mathematical equation to get there? 6 A. Yeah. There's math. 7 Q. Okay. So despite the fact that the bidding 8 procedures, the new bidding procedures said no formula, 9 no contingency, and your own testimony is that there's 10 an internal contradiction in the bid, you did not seek 11 clarification? 12 MR. WOLFSHOHL: Objection to form, 13 misstates the bid instructions. 14 A. Well, yeah. That's not what the bid form says, 15 and I do think that there is some tension between the 16 different components of the bid. 17 BY MR. CICACK: 18 Q. And you didn't seek clarification? 19 A. At that time, no. 20 Q. And you accepted their bid as the highest and 21 best? 22 A. Yes. 23 Q. Okay. So what does highest and best mean to 24 you? 25 A. To me it is the best return for the creditors</p>		

13:08:00-13:09:49	Page 101	13:11:01-13:12:31	Page 103
<p>1 of the estate.</p> <p>2 Q. So would you have accepted a highest and best</p> <p>3 bid from First United that said, We'll pay a hundred</p> <p>4 thousand dollars more than the next highest bid?</p> <p>5 Would you have accepted that?</p> <p>6 A. I don't know.</p> <p>7 Q. Okay. But that's essentially what you've</p> <p>8 accepted here is a bid that says, We'll guarantee a</p> <p>9 return to the other unsecured creditors of a hundred</p> <p>10 thousand dollars more than whatever the other guy bids?</p> <p>11 MR. WOLFSHOHL: Objection, form.</p> <p>12 A. No. I accepted the bid the way I interpret it,</p> <p>13 which is they bid no less than 7 million and I start</p> <p>14 with the 7 million bogey and do the math from there,</p> <p>15 notwithstanding this change in a sentence later in the</p> <p>16 letter.</p> <p>17 BY MR. CICACK:</p> <p>18 Q. Did you do a calculation to determine the value</p> <p>19 of the waiver if what you were attempting to determine</p> <p>20 is what a hundred thousand dollars more would give</p> <p>21 the -- would go to the unsecured creditors who are not</p> <p>22 the Connecticut families?</p> <p>23 A. Yes.</p> <p>24 Q. Is that in Exhibits 14, 15 and 16 that I</p> <p>25 provided you?</p>		<p>1 Q. So just so the testimony is clear here,</p> <p>2 whatever the Connecticut families told you about what</p> <p>3 they thought their bid said, they told you that after</p> <p>4 the complaint was filed by Alex Jones?</p> <p>5 A. Your TRO, yeah, yeah.</p> <p>6 Q. And it's your position that any conversations</p> <p>7 that you had with the Connecticut family lawyers about</p> <p>8 their bid and what they intended by their bid after Alex</p> <p>9 Jones filed his complaint is subject to a privilege?</p> <p>10 A. Yes.</p> <p>11 Q. Are you going to be in attendance on Monday at</p> <p>12 the hearing?</p> <p>13 A. Yes.</p> <p>14 Q. Do you plan to tell the judge that your</p> <p>15 conversations with the Connecticut families about their</p> <p>16 bid and what they intended by their bid is privileged?</p> <p>17 A. Discussions with counsel preparing for a</p> <p>18 hearing in a joint defense scenario, yeah, that's</p> <p>19 definitely privileged.</p> <p>20 Q. Your discussions with the Connecticut families?</p> <p>21 A. Yeah.</p> <p>22 Q. Okay. So in terms of their discussions with</p> <p>23 you about what they intended by their bid and those</p> <p>24 discussions that occurred after Alex Jones filed his</p> <p>25 TRO, you're intending to tell the judge those are</p>	
13:09:50-13:11:00	Page 102	13:12:37-13:13:34	Page 104
<p>1 A. Let me see. No. It's not on any of these.</p> <p>2 Q. Did you do the calculation for that?</p> <p>3 A. Yes.</p> <p>4 Q. All right. You personally?</p> <p>5 A. Yes.</p> <p>6 Q. In a spreadsheet, on a PDF? On what?</p> <p>7 A. It was in a version of the spreadsheet that is</p> <p>8 reflected in Exhibit 16.</p> <p>9 Q. Okay.</p> <p>10 MR. CICACK: Was that produced?</p> <p>11 MR. WOLFSHOHL: I don't know. It probably</p> <p>12 wasn't. Because I think these were documents that Jeff</p> <p>13 had worked on, and he didn't -- if you want, I can give</p> <p>14 it to you. I do think that maybe he prepared something</p> <p>15 that was like early on, just to see what the calculation</p> <p>16 would be if you interpreted it that way.</p> <p>17 MR. CICACK: All right. Can we get that</p> <p>18 at a break, you think?</p> <p>19 MR. WOLFSHOHL: Yeah. I've got to go look</p> <p>20 for it, but it was never something that was considered</p> <p>21 very long. So I don't know when in the process that was</p> <p>22 looked at, but it wasn't something that Jeff prepared.</p> <p>23 And these were the documents that Jeff produced to us.</p> <p>24 MR. CICACK: Okay.</p> <p>25 BY MR. CICACK:</p>		<p>1 privileged?</p> <p>2 MR. PATERSON: Objection, asked and</p> <p>3 answered and calls for a legal conclusion.</p> <p>4 MR. WOLFSHOHL: I mean, look, restate the</p> <p>5 question.</p> <p>6 BY MR. CICACK:</p> <p>7 Q. I just want to know, are you intending to rely</p> <p>8 on this privilege at this sale hearing?</p> <p>9 A. I don't know. I don't know.</p> <p>10 MR. BROOCKS: Well, you've got to make up</p> <p>11 your mind right now. You're not going -- no, no, no.</p> <p>12 You're not going to be able to get to the hearing and,</p> <p>13 all of a sudden, spring out what you would not tell us</p> <p>14 in the discovery. So I think that's a decision that</p> <p>15 needs to be made.</p> <p>16 And my point is, and this is directed to</p> <p>17 the attorneys. Are y'all still negotiating and talking</p> <p>18 when this TRO was filed? Because if you're still</p> <p>19 talking and negotiating opposite positions, you can't</p> <p>20 possibly have a common interest.</p> <p>21 MR. WOLFSHOHL: No. What he's testified</p> <p>22 to is that he accepted what he interpreted the bid to</p> <p>23 be.</p> <p>24 MR. BROOCKS: Okay.</p> <p>25 MR. WOLFSHOHL: Since then there was a</p>	

13:13:36-13:14:35	Page 105	13:16:06-13:17:35	Page 107
1 discussion, and his interpretation is what we intend to 2 go forward on. That's the discussion.		1 let's go back to Exhibit 8. Sorry about that.	
3 MR. BROOCKS: But he --		2 A. Okay.	
4 MR. WOLFSHOHL: He interpreted. That's 5 what's relevant -- but that's what's relevant. And 6 what's relevant is what he accepted. He accepted his 7 interpretation. That's what he based his decision on.		3 Q. Exhibit 8, page 2 of 6.	
8 MR. BROOCKS: And my point to you is going 9 to be the point on Monday, is that when two parties are 10 having a discussion -- however you want to frame it, 11 disagreement, I thought X, you thought Y -- that is not 12 a common interest. Those are two parties negotiating 13 and expressing --		4 A. Okay.	
14 MR. WOLFSHOHL: No, I get it. I 15 understand.		5 Q. Did you consider that when they put \$7 million 6 there and they said not less than \$7 million, that what 7 was really intended was up to \$7 million?	
16 MR. BROOCKS: So, you know, that's a ...		8 Did you consider that as a possibility?	
17 MR. WOLFSHOHL: I'm telling you this is 18 what he's testified to. He accepted an offer based on 19 his interpretation.		9 A. I don't remember considering that, no.	
20 MR. BROOCKS: But we're not talking about 21 that. We're talking about the ensuing discussions that 22 occurred about what he thought they thought and the 23 discussions that --		10 Q. Okay. Let's go back to page 4 of 6. Are you 11 there?	
24 MR. WOLFSHOHL: Look, let me talk to him 25 during a break. This is all just kind of coming up and		12 A. Yes.	
13:14:38-13:16:01	Page 106	13:17:40-13:18:50	Page 108
1 I don't --		1 A. Yes.	
2 MR. CICACK: Yeah, that's fine.		2 Q. Okay. Now you're talking about top of a range?	
3 MR. WOLFSHOHL: There's no question that 4 we have a common interest privilege based on the fact 5 that you sued both people and that we established it 6 when we discussed. I have to talk about what this 7 particular -- you're raising something that I hadn't 8 even thought about.		3 A. You referred to the chart. I'm not sure I 4 understand what you're asking.	
9 MR. BROOCKS: Okay.		5 Q. Well, what I'm asking you is the way you 6 interpreted their bid is -- do you see where it says 7 "proposed cash purchase price of alternative bid"?	
10 MR. WOLFSHOHL: So let me talk about it 11 during a break. Okay?		8 A. I see that.	
12 MR. BROOCKS: Okay.		9 Q. It says 2 million, 3 million, 5 million, 10 7 million. Do you see that?	
13 BY MR. CICACK:		11 A. Yes.	
14 Q. All right. You interpreted it to be based on 15 \$7 million?		12 Q. You interpreted their bid to mean the last one 13 there that says 7 million and across? That's how you 14 interpreted their bid?	
16 A. Yes.		15 A. No, because I disagree with the way the grid is 16 prepared. I don't think it's useful.	
17 Q. You concede that there is contradictory 18 language in the letter?		17 Q. It's their bid. You didn't prepare it.	
19 A. Yes.		18 A. What's your question?	
20 Q. And you concede, I think, that before accepting 21 the bid and filing your notice of successful bidder and 22 backup bidder, you did not seek clarification from the 23 joint bidders?		19 Q. You interpreted -- you thought -- you took 20 their bid to be the last line on that grid?	
24 A. Right.		21 A. No. I took it to be the first number on the 22 first page, 7 million.	
25 Q. Did you consider the possibility that -- well,		23 Q. Well, isn't that the last line on that grid, 24 7 million?	
		25 A. They happen to be the same number.	

13:18:52-13:20:10	Page 109	13:21:23-13:22:41	Page 111
<p>1 Q. All right. So are you saying that this grid 2 where it talks -- the last line where it says 3 \$7 million, is that what you -- at this point is that 4 what you consider their bid to be?</p> <p>5 A. I really don't know how to answer your question 6 other than I considered their bid to be the 7 million 7 they put on the first page.</p> <p>8 Q. Okay.</p> <p>9 A. This chart I don't think illustrates my 10 thinking.</p> <p>11 Q. Well, what did you think the purpose of this 12 chart was then?</p> <p>13 A. I thought it was meant to illustrate different 14 scenarios of how you would compare their bid with 15 alternative competing bids.</p> <p>16 Q. Right. And isn't the \$7 million the 17 alternative competing bid?</p> <p>18 A. Yes, but not under the chart because I think 19 the chart's math is wrong. Maybe that's why we're 20 talking past each other.</p> <p>21 Q. Okay. So when you see the 7 million on page 1, 22 you're interpreting that to be what the distributable 23 waiver would be -- necessary would be if the alternative 24 bid was \$7 million?</p> <p>25 A. I don't understand how you're asking this</p>		<p>1 A. Where you see the middle column and it says 2 "winning bid 7 million"?</p> <p>3 Q. Yep.</p> <p>4 A. What this illustrates is what I think the gift 5 class would get in comparison to the backup bid using 6 the math we talked about a few minutes ago, subtracting 7 out an estimate of administrative claims, multiplying by 8 the percentages, and then you do your comparison.</p> <p>9 And under 7 million the 209,000 is 10 obviously greater than the 94,000. So that's better for 11 the creditors.</p> <p>12 Q. And what's the above number starting at 13 4,350,000?</p> <p>14 A. So the above number, a couple of assumptions 15 change here to make it more conservative. The 16 administrative costs are assumed to be higher. 17 Connecticut's share of the claims pool is assumed to be 18 much lower.</p> <p>19 And what this is showing is what I 20 would -- I guess, now that you're allowing me to 21 explain, the problem with the chart that you were 22 referencing in the bid, that it did not account for the 23 existence of administrative costs that would have to get 24 paid before unsecured creditors get paid.</p> <p>25 So they can say their bid is 7 million,</p>	
13:20:11-13:21:23	Page 110	13:22:45-13:24:11	Page 112
<p>1 question.</p> <p>2 Q. All right. You tell me. \$7 million, how do 3 you get to \$7 million?</p> <p>4 A. They bid \$7 million.</p> <p>5 Q. How did they get there? Explain it. How did 6 they get there? You've got a million 750 in cash, 7 right?</p> <p>8 A. (Witness nods head affirmatively.)</p> <p>9 Q. Where did the rest of the money come from?</p> <p>10 A. So I interpret the 7 million to be sort of the 11 implied equivalent value.</p> <p>12 Q. Implied equivalent value of what?</p> <p>13 A. Of the competing bid.</p> <p>14 Q. Okay. So, in other words, the last line in the 15 chart?</p> <p>16 A. No.</p> <p>17 Q. Okay. So walk me through it. How do you get 18 to the 7 million?</p> <p>19 A. Have you got Exhibit 16?</p> <p>20 Q. I do.</p> <p>21 A. Okay.</p> <p>22 Q. It's the one page, yeah.</p> <p>23 A. All right. So there's essentially two charts 24 in one there. Do you see the bottom one?</p> <p>25 Q. Yeah.</p>		<p>1 but it actually might not be better than a bid of, say, 2 6 million because the available cash for the waiver has 3 a natural ceiling that is dictated by how much the admin 4 claims are and what the percentage of the claims are.</p> <p>5 So what this upper chart shows is even 6 though they say it's 7 million, they really only have 7 enough cash to give away to beat a bid of 4.35 million. 8 But that's still a lot higher than the 3.5. So this is 9 kind of academic.</p> <p>10 Q. But how come under the top chart you're using 11 75 percent/25 percent?</p> <p>12 A. Because those are more conservative 13 assumptions. What I was trying to do was saying, Look, 14 there is some perhaps uncertainty about the ultimate 15 allowed amount of the unsecured claims; say they lose a 16 couple of the appeals and the Connecticut percentage 17 goes down. I wanted to make sure that even under those 18 different outcomes, I wanted to make sure that the 19 winning bidder was still actually better and it was.</p> <p>20 Now, if you go with 96.7 that's on the 21 claims register as it is today, it's not even a close 22 comparison. This is sort of putting every assumption in 23 favor of justifying a First United American winning bid 24 and it just doesn't get there.</p> <p>25 Q. Well, why under the -- on the top illustration,</p>	

13:24:14-13:25:39	Page 113	13:26:48-13:27:55	Page 115
<p>1 why aren't you using \$7 million as the cash equivalent?</p> <p>2 A. Oh, because the point was to show -- well, I</p> <p>3 couldn't. Then it would be the same as the chart below</p> <p>4 it.</p> <p>5 Q. No, it wouldn't because it would be different</p> <p>6 percentages?</p> <p>7 A. That's true. It would just be way higher.</p> <p>8 Q. Okay.</p> <p>9 A. The reason it doesn't start with 7 is because</p> <p>10 this is doing the math sort of in reverse to say, what</p> <p>11 is the most that you could reasonably say that bid is</p> <p>12 worth? They say it's 7 million, but when you account</p> <p>13 for admins, it really only is equivalent to a 4.35.</p> <p>14 That's what that's meant to show.</p> <p>15 Q. So let me ask you this. What if their bid</p> <p>16 actually was, despite your interpretation, that it was</p> <p>17 just a hundred thousand dollars more than what the other</p> <p>18 unsecured creditors would have gotten under the FUAC</p> <p>19 bid? Humor me for a second. Let's assume that actually</p> <p>20 what they put in the letter is what they meant. Okay?</p> <p>21 A. (Witness nods head affirmatively.)</p> <p>22 Q. So would you agree with me that that is</p> <p>23 basically a bid that says a hundred thousand dollars</p> <p>24 more than the other guy?</p> <p>25 A. If I understood your question, assuming and</p>	<p>1 A. No.</p> <p>2 BY MR. CICACK:</p> <p>3 Q. Okay. Also in terms of future revenues, if</p> <p>4 First United was -- or anybody wanted to make a bid that</p> <p>5 said, you know, Part of this bid will be cash plus a</p> <p>6 percentage of future business revenues, is that</p> <p>7 something you would have accepted?</p> <p>8 A. I would have considered it.</p> <p>9 Q. Under the heading of highest and best?</p> <p>10 A. Well, I'm going to consider any bids that are</p> <p>11 made.</p> <p>12 Q. But isn't that kind of bid, by definition,</p> <p>13 contingent and based on a formula?</p> <p>14 MR. WOLFSHOHL: Objection to form.</p> <p>15 BY MR. CICACK:</p> <p>16 Q. If I say to you -- let me rephrase it.</p> <p>17 If I say to you, I'm going to bid, for</p> <p>18 instance, a hundred thousand dollars plus 5 percent of</p> <p>19 profits for five years. All right? That's contingent</p> <p>20 on profits, right?</p> <p>21 A. (Witness nods head affirmatively.)</p> <p>22 Q. Correct?</p> <p>23 A. Yes.</p> <p>24 Q. And in order to determine what that is, you</p> <p>25 have to do math, right? You have to do a formula?</p>		
13:25:43-13:26:42	Page 114	13:27:58-13:29:07	Page 116
<p>1 humoring you that your presumption is correct, are you</p> <p>2 correct, sure.</p> <p>3 Q. Okay. And that's not the type of bid you would</p> <p>4 have accepted from anybody, is it?</p> <p>5 A. I don't know.</p> <p>6 Q. You don't know if you would have? Well, you</p> <p>7 said highest and best. Give me your highest and best,</p> <p>8 give me your best bid. Isn't that what it means?</p> <p>9 A. That's what I thought. And then your client</p> <p>10 came in saying you would have bid more.</p> <p>11 Q. My client said that?</p> <p>12 A. You said that.</p> <p>13 Q. Okay.</p> <p>14 A. Well, let's get back to actual questions and</p> <p>15 try to be productive.</p> <p>16 Q. So you would not have expected any of the</p> <p>17 bidders, when you're asking for highest and best, to</p> <p>18 come in with a bid that says, I bid X amount but if</p> <p>19 somebody else bids more, then I'll bid a hundred</p> <p>20 thousand dollars more than that other bid?</p> <p>21 MR. WOLFSHOHL: Objection, form.</p> <p>22 BY MR. CICACK:</p> <p>23 Q. Would you expect to see that when you call for</p> <p>24 a highest and best?</p> <p>25 MR. WOLFSHOHL: Objection to form.</p>	<p>1 A. Yes.</p> <p>2 Q. All right. So based on your bid instructions,</p> <p>3 you couldn't have accepted something like that?</p> <p>4 MR. WOLFSHOHL: Objection, form.</p> <p>5 A. I would have considered it. I don't know if I</p> <p>6 would have accepted it as the highest and best.</p> <p>7 BY MR. CICACK:</p> <p>8 Q. Why?</p> <p>9 A. Because you're talking about a bid I haven't</p> <p>10 even seen. I'd have to analyze it and think about it.</p> <p>11 Q. All right. So are you saying that under the --</p> <p>12 let's look back at Exhibit 6. That's the bid</p> <p>13 instructions, the new ones.</p> <p>14 A. Give me a second.</p> <p>15 Q. No worries.</p> <p>16 A. I think it's got your bid attached to it. Is</p> <p>17 it that one?</p> <p>18 Q. No, no. It's the new bid.</p> <p>19 A. Just this page?</p> <p>20 Q. Just that page.</p> <p>21 A. I gotcha. Okay. Yes, I have it.</p> <p>22 Q. I want to look at page 2.</p> <p>23 A. Okay.</p> <p>24 Q. So you say you want a specific dollar amount</p> <p>25 and avoiding references to formulas and other</p>		

13:29:10-13:30:50	Page 117	13:32:20-13:34:06	Page 119
<p>1 contingencies, right?</p> <p>2 A. Right.</p> <p>3 Q. Isn't that communicating to the bidder to avoid</p> <p>4 using a formula and avoid using contingencies?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. But despite that, if someone made a bid</p> <p>7 that was contingent on something else or did include a</p> <p>8 formula, you still would have considered it?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. All right. So let's go back and, if we</p> <p>11 could, look at 14 and 15 again.</p> <p>12 A. Okay.</p> <p>13 Q. Exhibits 14 and 15. I think you said that you</p> <p>14 think 15 was created before Exhibit 14 was created?</p> <p>15 A. Yeah. Now I think it might be the other way</p> <p>16 around.</p> <p>17 Q. All right. Well, let's just walk through</p> <p>18 Exhibit 14 real quick and you can explain to us what</p> <p>19 this is.</p> <p>20 A. I thought we did this one already.</p> <p>21 Q. Did we? Okay. How about 15?</p> <p>22 A. It's the same. The only difference I can tell</p> <p>23 is that the proceeds waiver changes by a hundred grand.</p> <p>24 But I think that's a plug in the spreadsheet. I don't</p> <p>25 think that's the result. Like I said, this wasn't my</p>		<p>1 that's what you --</p> <p>2 A. Yeah. That's the amount Connecticut would be</p> <p>3 able to give to the other creditors.</p> <p>4 Q. If you'd look at the third page of this exhibit</p> <p>5 that is marked TRANZON887.</p> <p>6 A. Okay.</p> <p>7 Q. Okay. So this changes in terms of the</p> <p>8 percentages, right? It goes from 25/75 to 3.3 to 996.7,</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. And then the distributable proceeds waiver</p> <p>12 changes to 173,250?</p> <p>13 A. Yeah.</p> <p>14 Q. Do you know why that number is used there?</p> <p>15 A. No. I can't tell from this. I don't know why</p> <p>16 that's there.</p> <p>17 Q. That's okay. That makes two of us.</p> <p>18 So let's look at Exhibit 15.</p> <p>19 A. Okay.</p> <p>20 Q. This is 889. So this appears to be the same as</p> <p>21 Exhibit 14 except it has a distributable proceeds waiver</p> <p>22 of 650?</p> <p>23 A. Yes.</p> <p>24 Q. And why is that number being used there?</p> <p>25 A. I don't know.</p>	
13:30:58-13:32:18	Page 118	13:34:11-13:36:07	Page 120
<p>1 spreadsheet. I think Jeff created this.</p> <p>2 Q. Are these essentially what the numbers look</p> <p>3 like if you assume that the waiver is a certain amount?</p> <p>4 A. I'm not sure how to answer that.</p> <p>5 Q. Why? Is it a bad question or that you just</p> <p>6 don't know?</p> <p>7 A. Both.</p> <p>8 Q. Okay. Don't worry. I'm not offended.</p> <p>9 All right. Did you talk to Jeff about</p> <p>10 these?</p> <p>11 A. Yeah.</p> <p>12 Q. Okay. So let's look at 14. And it shows there</p> <p>13 that there's a distributable proceeds waiver of 750,</p> <p>14 correct?</p> <p>15 A. Yes, 85.</p> <p>16 Q. Now, why was that used? What's the purpose?</p> <p>17 What is this trying to show?</p> <p>18 A. I don't know. I didn't make this spreadsheet.</p> <p>19 But it looks like the 750 is what Connecticut would have</p> <p>20 available to gift under their waiver mechanism because</p> <p>21 it's basically their percentage of the net proceeds</p> <p>22 after admins.</p> <p>23 Q. Okay.</p> <p>24 A. I can't see the formula.</p> <p>25 Q. Assuming the other assumptions are correct,</p>		<p>1 Q. All right. Okay. Now, based on the</p> <p>2 distributable proceeds waiver as you interpreted it,</p> <p>3 what amount of money would the alternative bidder have</p> <p>4 had to have bid in order to be a higher bid?</p> <p>5 A. I think I understand your question. That's</p> <p>6 what Exhibit 16 top half is meant to show, and it's the</p> <p>7 4.35. But that's if Connecticut falls to 75 percent of</p> <p>8 the claims pool, admins go up to 750. It depends on</p> <p>9 those assumptions.</p> <p>10 Q. Let's assume -- the bottom of 16, the</p> <p>11 percentages there, that's based just on a claims</p> <p>12 register analysis?</p> <p>13 A. Yeah. The claims filed in the FSS case.</p> <p>14 Q. Just taking them at face value?</p> <p>15 A. Yeah.</p> <p>16 Q. Okay. No analysis about what claims might</p> <p>17 survive or not survive at the end of the day, just</p> <p>18 whatever the claim amount was?</p> <p>19 A. Some analysis but that's essentially what the</p> <p>20 register reflects.</p> <p>21 Q. Okay. So if you use those numbers then, those</p> <p>22 percentages, what is the amount that the other bid, the</p> <p>23 other qualified bid, would have to have been to be</p> <p>24 higher than the joint bid?</p> <p>25 A. Yeah. That I can't do in my head. I would</p>	

13:36:11-13:38:44	Page 121	13:39:55-13:41:19	Page 123
<p>1 need the spreadsheet, and I would just change the assumptions.</p> <p>3 Q. Okay. Has that been done?</p> <p>4 A. Yes.</p> <p>5 Q. And who did it?</p> <p>6 A. I did it.</p> <p>7 Q. Okay. So is that something that you have available that you could provide to us?</p> <p>9 A. I don't know. I have the spreadsheet I can show you. I don't know if I saved a version of it with that math in there. I can tell you that the alternative bid, to be better, would have to be way, way higher, like 15 or 20 million or something like that.</p> <p>14 Q. Okay. The amount that was -- the cash amount that was bid by the joint bidders, has that been fully funded?</p> <p>17 A. Yes.</p> <p>18 Q. And you have that in your IOLTA account?</p> <p>19 A. No. I have it in a Chapter 7 estate account.</p> <p>20 Q. Got it. Okay. Who is The War is Over?</p> <p>21 A. I think that's the joint bidders' designee entity to acquire the assets.</p> <p>23 Q. Have you determined that The War is Over has the same owners as Global Tetrahedron?</p> <p>25 A. No. I don't think I've looked at that.</p>		<p>1 A. They sent me a letter from their financial advisor, certifying that they had that much money in the bank.</p> <p>4 Q. Not that they had a million-750. I didn't see that letter.</p> <p>6 A. Oh, you're right. It was 1.2. That's right.</p> <p>7 Q. So it would matter to you where the additional money came from?</p> <p>9 A. I don't know.</p> <p>10 Q. Okay. Well, then if it didn't matter, why would you on the bid form request that disclosure of any partners?</p> <p>13 A. Well, what we asked for in the bid form initially, the goal was to understand whether bidders were real. We had hundreds of requests for information. Several of them never responded to follow-ups. And given the notoriety of the assets we were concerned there might be some shenanigans. So we wanted to make sure that the people who were bidding were legitimate bidders.</p> <p>21 Q. Okay. Who prepared the motion to approve the sale?</p> <p>23 A. My counsel did and I helped with it.</p> <p>24 Q. Did any of the attorneys for the joint bidders help in preparation of the motion?</p>	
13:38:47-13:39:54	Page 122	13:41:22-13:42:50	Page 124
<p>1 Q. Okay. Well, you requested, I think, in the bidding procedures, that any bidder identify any partners or other sources where money's coming from, right?</p> <p>5 A. Yes, yes.</p> <p>6 Q. Do you know whether or not all of Global Tetrahedron's money came from Global Tetrahedron?</p> <p>8 A. Yes.</p> <p>9 Q. How do you know that?</p> <p>10 A. So there were two wires that I got. I got the deposit and then I got the difference. And when my bank sends me a wire, it says who sent it; and Global Tetrahedron was the account holder that sent the money.</p> <p>14 Q. Are you confident that somebody didn't give them the money to do that?</p> <p>16 A. I don't know if they did or not, no.</p> <p>17 Q. Would it matter to you -- if they were not the source of the money but it came from a third party, wouldn't that be something you'd want to know?</p> <p>20 A. Maybe. But the context here is they had already given me proof that they had that amount of money in the bank before they bid.</p> <p>23 Q. No, they didn't.</p> <p>24 A. Yes, they did.</p> <p>25 Q. How did they do that?</p>		<p>1 A. I think they might have reviewed a draft before it was filed.</p> <p>3 Q. And did they make any comments?</p> <p>4 A. I don't remember.</p> <p>5 Q. Now, let me ask you to go back to Exhibit 8. And I want to go through with you the last paragraph of Exhibit 8, starting at -- well, it's actually the second-to-last paragraph starting on page 5 of 6 at the bottom where it says "The Connecticut families."</p> <p>10 A. I see that.</p> <p>11 Q. All right. The second sentence says, "The Connecticut families trust that the Chapter 7 trustee in fulfilling his fiduciary duties would not sell the acquired assets to any purchaser offering less than \$7 million for such assets, as such bid would offer less value to unsecured creditors."</p> <p>17 Q. Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Okay. I thought you just told me that in your calculations the alternative bid would have to be like 15 million?</p> <p>22 A. Depending on the assumptions.</p> <p>23 Q. They're making the bid, right, and they're saying 7 million, correct? They're not saying 15 million; they're saying 7 million.</p>	

13:42:53-13:44:07	Page 125	13:45:54-14:06:58	Page 127
<p>1 A. That's what their sentence says.</p> <p>2 Q. Okay. The next sentence says, "Moreover, the 3 Connecticut families implore the Chapter 7 trustee to 4 remember that the best interest of creditors in this 5 case is served by ensuring that the assets being sold 6 will not be used to continue harassing, victimizing and 7 defaming the Connecticut families (i.e., the very reason 8 this bankruptcy case exists)."</p> <p>9 Was that a consideration to you at all?</p> <p>10 A. No.</p> <p>11 Q. Were there any societal concerns that were of 12 consideration to you?</p> <p>13 A. No.</p> <p>14 Q. Did the fact that 35, 40 people would lose 15 their job if you accepted the joint bid, was that a 16 consideration at all?</p> <p>17 A. I'm sorry. Say that again.</p> <p>18 Q. The fact that 30 to 40 people would lose their 19 jobs when you accepted the Connecticut family joint bid 20 as opposed to the First United bid, was that a 21 consideration at all?</p> <p>22 A. No.</p> <p>23 Q. All right. But you knew that the employees of 24 FSS were not going to continue if you accepted the joint 25 bid?</p>		<p>1 assumptions.</p> <p>2 Q. But 7 million, you would have probably accepted 3 that?</p> <p>4 A. Sitting here today, yes. I would have done 5 more assumptions -- or I mean, I would have done more 6 analysis and looked at it differently. We might have 7 had to do additional process. I don't know. That's not 8 what happened.</p> <p>9 MR. CICACK: If we could take a break and 10 get that document that you said --</p> <p>11 MR. WOLFSHOHL: Oh, yeah, yeah. Let me go 12 see if I can ...</p> <p>13 MR. CICACK: And then I think that I 14 will -- once we do that, I think I'll pass the witness.</p> <p>15 MR. WOLFSHOHL: Okay.</p> <p>16 THE VIDEOGRAPHER: The time is 1:45, and 17 we are off the record.</p> <p>18 (Recess taken)</p> <p>19 (Murray Exhibit 17 was marked for 20 identification.)</p> <p>21 THE VIDEOGRAPHER: The time is 2:06 p.m. 22 Central Time, and we are back on the record.</p> <p>23 BY MR. CICACK:</p> <p>24 Q. Okay. Mr. Murray, at the break you were going 25 to look for something. Can you explain what you were</p>	
13:44:09-13:45:52	Page 126	14:07:01-14:08:06	Page 128
<p>1 A. I mean, that's my assumption. I don't know 2 that for sure.</p> <p>3 Actually, I'm not sure I answered that 4 correctly. Could you state the question again?</p> <p>5 Q. Yeah. I'm just saying did you understand that 6 by accepting the joint bid, that the employees of FSS 7 would no longer be employed?</p> <p>8 A. Sort of. I assumed they wouldn't be employed 9 by FSS eventually. I also assumed that the majority of 10 them would be employed by whatever entity Mr. Jones went 11 to to continue his business.</p> <p>12 Q. Okay. If First United American had bid in 13 excess of \$7 million cash, would you have accepted that 14 as the highest and best bid?</p> <p>15 A. Probably.</p> <p>16 Q. How much would it have had to have bid for you 17 to accept the cash as the highest and best bid?</p> <p>18 A. I don't know exactly what the number would be.</p> <p>19 Q. Okay. Do you have a range?</p> <p>20 A. Kind of. It's sort of in the range we've been 21 talking about. The reason is if there were a number, I 22 can test that against ranges of assumptions to see 23 whether it's better or worse. That was another reason 24 to do the highest and best bid. 3.5 is what was 25 offered, and it was clearly worse than all of the</p>		<p>1 going to look for and what you found?</p> <p>2 A. Yeah. I think you were asking me if I had done 3 a version of the analysis to see what the competing bid 4 would have to be if the waiver was calculated only with 5 the hundred thousand, something like that. And I 6 remember doing that analysis.</p> <p>7 I could not during the break find that 8 spreadsheet, but I will keep looking for you.</p> <p>9 Q. Okay. Thank you.</p> <p>10 Could you look at what I've marked as 11 Exhibit 17, which is -- the Bates mark on that is 12 TRANZON 795.</p> <p>13 A. I see it.</p> <p>14 Q. Can you tell me what that is, if you know.</p> <p>15 A. Yeah. I think this is a snapshot of what the 16 auction process was looking like at a particular time.</p> <p>17 I'm not sure when.</p> <p>18 Q. And was this prepared by you or Tranzon?</p> <p>19 A. Tranzon.</p> <p>20 Q. Have you seen this before?</p> <p>21 A. I have.</p> <p>22 Q. Okay. And does it -- based on what you've seen 23 here, is it accurate?</p> <p>24 A. Yeah. I mean, it would depend on when; but 25 yeah, it looks like it was accurate as of whenever it</p>	

14:08:08-14:09:33	Page 129	14:11:25-14:12:27	Page 131
<p>1 was made, like toward the end of October. I think 2 that's about right.</p> <p>3 Q. Yeah. It looks like October 30th. Okay.</p> <p>4 A. Oh, yeah. That's what it says on the document,</p> <p>5 October 31st. That sounds about right.</p> <p>6 Q. October 31st. All right. In the data room</p> <p>7 you're able to track who accesses it, right?</p> <p>8 A. Yes.</p> <p>9 Q. All right.</p> <p>10 A. Well, not me but the auctioneer does.</p> <p>11 Q. When you filed your sale motion, there are</p> <p>12 documents that are attached to the sale motion that</p> <p>13 purport to transfer and assign assets, right?</p> <p>14 A. Are you talking about the APA?</p> <p>15 Q. Yeah.</p> <p>16 A. Yes.</p> <p>17 Q. And maybe I missed it, but how did you envision</p> <p>18 that the distributable proceeds waiver would be</p> <p>19 documented?</p> <p>20 A. At what time?</p> <p>21 Q. When the sale closed.</p> <p>22 A. I'm not sure.</p> <p>23 Q. Okay. Have you seen any documentation</p> <p>24 concerning how the distributable proceeds waiver gets</p> <p>25 from you and then to the other unsecured creditors?</p>		<p>1 assumptions about what the bidders might do, how we</p> <p>2 might divide up the lots.</p> <p>3 At that time we thought it might even be</p> <p>4 possible that some portion of the assets might go to</p> <p>5 your client based on how different bidders were bidding</p> <p>6 on different lots. My recollection is this was very</p> <p>7 difficult to make sense of or follow, and there were</p> <p>8 many, many versions of this. And that was part of the</p> <p>9 thinking about why a traditional live auction just</p> <p>10 wasn't going to be practical, given the nature of the</p> <p>11 two bids and the nature of the interest in the lots.</p> <p>12 Q. Okay. But as far as you know, the actual</p> <p>13 person that prepared the documents I put in front of you</p> <p>14 was Jeff?</p> <p>15 A. Yeah. It's him or somebody in his shop, yeah.</p> <p>16 Q. Let me get them back. I'm not going to mark</p> <p>17 them as an exhibit.</p> <p>18 Thank you, sir.</p> <p>19 MR. CICACK: I'm going to pass the</p> <p>20 witness.</p> <p>21 Thank you very much.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
14:09:38-14:11:21	Page 130	14:12:28-14:13:40	Page 132
<p>1 A. I think we talked about it being addressed in</p> <p>2 the sale order itself, but I don't remember if it's</p> <p>3 anywhere else.</p> <p>4 Q. Okay. But have you seen any drafts or anything</p> <p>5 like that?</p> <p>6 A. No, not that comes to mind.</p> <p>7 Q. Okay. Just one other question. I'm going to</p> <p>8 hand this to you. I don't want to make it an exhibit</p> <p>9 but I'd like for you to look at these and just tell me</p> <p>10 if you know what they are because I think they might be</p> <p>11 better asked of Jeff tomorrow.</p> <p>12 A. Sure.</p> <p>13 Q. But I just want to make sure. If you've got a</p> <p>14 lot of knowledge about them, I might ask you about them.</p> <p>15 A. Yeah. I think I know what these are.</p> <p>16 Q. Can you tell us?</p> <p>17 A. Yeah. So over that weekend, after we got the</p> <p>18 initial bids, we were sort of trying to figure out how</p> <p>19 to proceed with the auction process. And one of the</p> <p>20 possibilities was a live multi-round bid.</p> <p>21 Jeff Tanenbaum had prepared, I think, a</p> <p>22 couple of spreadsheets -- I don't know if they're all</p> <p>23 here -- where he -- and you probably should ask him</p> <p>24 about it -- where he projected what that kind of bid</p> <p>25 might look like round after round, making certain</p>		<p>1 EXAMINATION</p> <p>2 QUESTIONS BY MR. BROOCKS:</p> <p>3 Q. Mr. Murray, my name is Ben Broocks. I</p> <p>4 represent Alex Jones.</p> <p>5 MR. WOLFSHOHL: Before you begin to</p> <p>6 question, I just need to clarify. I am not waiving my</p> <p>7 position that Alex Jones does not have standing to</p> <p>8 object to the sale. I am going to let you proceed. I</p> <p>9 just want you to know so that there's no confusion that</p> <p>10 that is not a position that the trustee is waiving.</p> <p>11 MR. BROOCKS: Okay.</p> <p>12 BY MR. BROOCKS:</p> <p>13 Q. Mr. Murray, Ben Broocks is my name. I want to</p> <p>14 ask you to kind of pick up where you were leaving off</p> <p>15 there a minute ago, to get clear on what exactly this --</p> <p>16 I'm going to call it the waiver, try to use some of</p> <p>17 Mr. Cicack's terminology. This will be No. 18.</p> <p>18 (Murray Exhibit 18 was marked for</p> <p>19 identification.)</p> <p>20 BY MR. BROOCKS:</p> <p>21 Q. This is document 915. This is your motion for</p> <p>22 expedited sale.</p> <p>23 A. Okay.</p> <p>24 Q. Take a look through that and see if you can</p> <p>25 confirm that that's what that is.</p>	

14:14:06-14:15:21	Page 133	14:16:36-14:17:57	Page 135
<p>1 A. Yeah. This looks like the motion that we're 2 hearing on Monday, I think.</p> <p>3 Q. Yeah. And so just for clarity, I tried to -- I 4 have the page numbers on the bottom right in red, and 5 they kind of go sequentially throughout the entirety of 6 the document, I think.</p> <p>7 A. Yeah. I see that. It looks like that's the 8 case.</p> <p>9 Q. I hope I did it that way. Anyway, take a look 10 at the first one, which is the basic motion itself. And 11 I want you to look at page red numbered 14. Okay? And 12 I want you to walk me through that so I can understand 13 what that is.</p> <p>14 A. You're talking about the chart?</p> <p>15 Q. Yes, I am.</p> <p>16 A. Yeah. So this is the chart we had talked about 17 with Mr. Cicack a little bit ago.</p> <p>18 Q. Well, it's one of two. Just so you'll know 19 where I'm going, on the next page there's another chart. 20 We're going to do them both.</p> <p>21 So walk me through the first one.</p> <p>22 A. All right. So the first column here -- well, 23 this is meant to show how much money goes to the 24 non-Connecticut creditors under different scenarios.</p> <p>25 Q. Hold on one second. I'm going to put this up,</p>		<p>1 expenses.</p> <p>2 Q. And what did you assume the auctioneer's 3 commission was going to be on this?</p> <p>4 A. It was based on the percentages in his 5 engagement letter and the cash amounts that were bid on 6 the assets. And there's a different percentage -- I 7 don't remember exactly what they are -- different 8 percentage for IP assets and for tangible assets. There 9 was an allocation done and estimate of what the fees 10 would be.</p> <p>11 Q. Can you give me a percentage, a netted-out 12 percentage?</p> <p>13 A. I don't even remember. Somewhere between 10 14 and 20, but it's -- I don't remember exactly.</p> <p>15 Q. And has your auctioneer agreed to these numbers 16 that you use in here?</p> <p>17 A. On this -- what do you mean? I haven't heard 18 him disagree with the estimate; but I don't have an 19 agreement with him on what his exact commission should 20 be, if that's what you're asking.</p> <p>21 Q. Well, let me try to rephrase the question. 22 So the winning bid in your estimation, the 23 joint bid, was how much total in your estimation?</p> <p>24 A. 7.</p> <p>25 Q. \$7 million?</p>	
14:15:25-14:16:32	Page 134	14:17:59-14:19:07	Page 136
<p>1 Chris, so we can all see it on that screen, I hope. 2 Okay?</p> <p>3 A. Yeah. That's what I've got in front of me in 4 hard copy.</p> <p>5 Q. Okay, good. Excellent. So go ahead.</p> <p>6 A. So it's meant to demonstrate an estimate of 7 what the non-Connecticut creditors of FSS would get 8 under different scenarios. And then there's the backup 9 bid, which is First United American's bid.</p> <p>10 Q. Walk me through each one of these columns. 11 Start on one and walk me through it.</p> <p>12 A. Which column?</p> <p>13 Q. Whichever you want.</p> <p>14 A. Backup bid.</p> <p>15 Q. Okay.</p> <p>16 A. So the bid was 3.5 million cash.</p> <p>17 Q. That's for First United?</p> <p>18 A. Yes. Less an estimated admin cost of 650.</p> <p>19 Q. Stop it right there. What goes into the admin 20 cost?</p> <p>21 A. It's a few things. Well, first of all, it's 22 the costs associated with the sale of these assets. So 23 it includes an estimate of the legal fees associated 24 with this process, the trustee commission, the 25 auctioneer's commission, and also the auctioneer's</p>		<p>1 A. (Witness nods head affirmatively.)</p> <p>2 Q. All right. Now, what was his percentage of 3 that 7 million on paper supposed to be?</p> <p>4 A. I estimated it at the same as the backup bidder 5 because that 7 million isn't purchase money cash. So 6 his commission would be calculated on the cash that 7 comes in.</p> <p>8 Q. That's what I'm trying to nail down. You are 9 not going to pay your auctioneer on anything other than 10 the cash portion of the joint bidders' bid, right?</p> <p>11 A. I'm not sure because I think there is a little 12 bit of ambiguity in what his commission is. There's 13 certainly value created by the process that's not 14 reflected in the purchase price. And how and whether 15 that gets compensated, I don't know that yet.</p> <p>16 Q. But your position is that his commission, 17 whatever that percentage number is, should be computed 18 more or less on 1.75 million, not 7 million?</p> <p>19 A. Well, I think that's what the minimum would be, 20 yeah, and not 7 million.</p> <p>21 Q. And you've expressed that to him, that that's 22 your belief and opinion, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And what has he said in response?</p> <p>25 A. He said, We'll talk about it.</p>	

14:19:09-14:20:11	Page 137	14:21:23-14:22:30	Page 139
<p>1 Q. What does that mean?</p> <p>2 A. I think it means at some point in the future we</p> <p>3 will negotiate what an appropriate amount of</p> <p>4 compensation should be based on a nontraditional</p> <p>5 purchase price scenario that we have here.</p> <p>6 Q. And I guess I'm wanting to get clarity here for</p> <p>7 what happens on Monday. The judge can understand that</p> <p>8 under no conditions are you going to give him 10 percent</p> <p>9 or 20 -- whatever the percentage is, of \$7 million.</p> <p>10 It's going to be some plus or minus around that 1.75.</p> <p>11 Would that be fair to say?</p> <p>12 A. As I sit here today, I expect that we will</p> <p>13 agree on some sort of number in that range; and I also</p> <p>14 expect that we'll come back to get court approval of</p> <p>15 that.</p> <p>16 Q. Okay. Now, the percentage that you get, what</p> <p>17 is your percentage?</p> <p>18 A. So mine is a statutory percentage, but it's</p> <p>19 roughly 3 percent of cash realized.</p> <p>20 Q. What will that 3 percent be based on?</p> <p>21 A. Cash only.</p> <p>22 Q. 1.75 if the joint bidders are successful?</p> <p>23 A. Yeah, it will be significantly lower than the</p> <p>24 winning bid.</p> <p>25 Q. Explain to us carefully so I can understand it,</p>	<p>1 A. I've sold assets where people have assumed</p> <p>2 liabilities as part of that.</p> <p>3 Q. So assumption of liabilities. What other kind</p> <p>4 of forms of noncash consideration have you been involved</p> <p>5 in deal-wise?</p> <p>6 A. Claims waivers or settlements.</p> <p>7 Q. Explain that.</p> <p>8 A. So it's not uncommon to sell an asset to a</p> <p>9 party that has other types of interest in the case.</p> <p>10 Maybe they're a creditor; maybe there's an adversary</p> <p>11 proceeding. And part of the sale might also be a</p> <p>12 settlement of those claims. So that would be noncash</p> <p>13 consideration.</p> <p>14 Q. Give me a hypothetical so I can understand</p> <p>15 that. If you'd just flesh that out a little bit.</p> <p>16 A. Perhaps the estate is suing you for a</p> <p>17 preference for a hundred thousand dollars but I'm also</p> <p>18 selling a beach house for a million, and we say -- I'm</p> <p>19 selling the beach house and you make an offer that says</p> <p>20 I'll give you a million dollars for the beach house but</p> <p>21 you have to waive the preference claim against me,</p> <p>22 something like that, where it's not quite cash but it</p> <p>23 does have value to the estate. I guess, in that case,</p> <p>24 the value is negative, but ...</p> <p>25 Q. But it's a tangible finite number?</p>		
14:20:14-14:21:21	Page 138	14:22:32-14:23:24	Page 140
<p>1 if the global bid that you say the joint bidders</p> <p>2 exceeded was 7 million, why wouldn't you and the</p> <p>3 auctioneer get a percentage of the gross amount?</p> <p>4 A. Well, because our compensation is calculated</p> <p>5 and determined different ways. His is based on an</p> <p>6 employment application and an application to the Court</p> <p>7 based on what we negotiate but also based on, I believe,</p> <p>8 the value that's added and that he can demonstrate.</p> <p>9 My commission is calculated by a statutory</p> <p>10 formula with definitions on what can be considered. And</p> <p>11 my understanding is it's based on cash that flows</p> <p>12 through the estate, not a theoretical value.</p> <p>13 Q. Now, you told Mr. Cicack earlier that you've</p> <p>14 been involved in hundreds, or scores, of 363 sales and</p> <p>15 sales similar to this, I guess, didn't you?</p> <p>16 A. Yeah. I think I said a couple dozen or a few</p> <p>17 dozen.</p> <p>18 Q. Have you ever done a transaction where it was</p> <p>19 noncash consideration as a component?</p> <p>20 A. Yes.</p> <p>21 Q. Like what kind of noncash consideration?</p> <p>22 A. I've seen it with --</p> <p>23 Q. I'm asking where you've done it though. You.</p> <p>24 A. Where I've done it?</p> <p>25 Q. Yeah. Where you've been involved.</p>	<p>1 A. Yeah, or an estimate. If it's pending</p> <p>2 litigation, I don't know necessarily what the value of a</p> <p>3 claim is. It might be a range.</p> <p>4 Q. And how has your compensation been in those</p> <p>5 situations? Did you take that noncash component into</p> <p>6 account?</p> <p>7 A. No.</p> <p>8 Q. That was just something you did? You only got</p> <p>9 money in your compensation on the cash actually</p> <p>10 received?</p> <p>11 A. Yeah. And my compensation gets calculated like</p> <p>12 at the end of the case, after everything's been settled</p> <p>13 and you know exactly how much cash went through. And</p> <p>14 then the math is applied. It's actually done by a</p> <p>15 software formula.</p> <p>16 Q. Tell me again how many auctions you've been</p> <p>17 involved in.</p> <p>18 A. Maybe a couple dozen.</p> <p>19 Q. And how many of those auctions have you ever</p> <p>20 had noncash components?</p> <p>21 A. A small number, a handful.</p> <p>22 Q. Give me --</p> <p>23 A. I don't know. Maybe less than five.</p> <p>24 Q. Give me the examples of what the noncash</p> <p>25 components were of those five. Don't guess. If you</p>		

14:23:27-14:24:37	Page 141	14:25:29-14:26:21	Page 143
<p>1 don't know, you don't know.</p> <p>2 A. I don't remember any specific one.</p> <p>3 Q. So as you sit here right now, your testimony is</p> <p>4 that you've been involved in auctions where there was</p> <p>5 noncash components but you can't remember any specific</p> <p>6 kinds of noncash components?</p> <p>7 A. Right.</p> <p>8 Q. Okay. Now, you told Mr. Cicack earlier that</p> <p>9 you went back and did a little due diligence to try to</p> <p>10 figure out whether -- I'm sorry. Strike that.</p> <p>11 MR. BROOCKS: When I say strike that, that</p> <p>12 means I just want a paragraph return, ma'am.</p> <p>13 BY MR. BROOCKS:</p> <p>14 Q. And that's not for you, that strike that. So</p> <p>15 I'll start over.</p> <p>16 Now, you were presented by the joint</p> <p>17 bidders with this waiver as a part of their bid, right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Tell us again what you did to confirm</p> <p>20 that it was not illusory or that it was real. What did</p> <p>21 you do?</p> <p>22 A. I did the analysis we've been discussing, which</p> <p>23 was evaluating from the perspective of unsecured</p> <p>24 creditors of FSS whether they would be better off under</p> <p>25 a bid with that mechanism or an alternative.</p>	<p>1 this --</p> <p>2 Q. Did you find any Law Review articles that</p> <p>3 discussed it?</p> <p>4 A. I don't think so, no.</p> <p>5 Q. Did you consult any outside experts on this?</p> <p>6 A. In a sense. I consulted my own counsel.</p> <p>7 Q. Other than your lawyers?</p> <p>8 A. No.</p> <p>9 Q. I'm assuming I'm not going to be able to find</p> <p>10 out what your lawyer told you. Maybe I could.</p> <p>11 But other than your lawyer, you didn't</p> <p>12 talk to anybody else then?</p> <p>13 A. No.</p> <p>14 Q. Okay. So you didn't talk to your colleagues.</p> <p>15 You did legal research. You couldn't find anything that</p> <p>16 even mentioned it case-wise, and you couldn't find any</p> <p>17 scholarly discussions on it and you didn't talk to any</p> <p>18 experts?</p> <p>19 A. I didn't find anything exactly on it but I did</p> <p>20 find analogous situations that I talked about --</p> <p>21 Q. Give me the most analogous situation you</p> <p>22 believe that you found.</p> <p>23 A. Oh, I don't remember the case name. But there</p> <p>24 was a case where there was a challenge to a trustee's</p> <p>25 decision to accept a lower bid that came with a claims</p>		
14:24:41-14:25:29	Page 142	14:26:24-14:27:19	Page 144
<p>1 Q. Yeah. Maybe my question wasn't clear.</p> <p>2 What did you do to determine the</p> <p>3 commercial reasonableness of this apart from running</p> <p>4 numbers? Did you call anybody, for example, say, Hey --</p> <p>5 one of your fellow trustees and say, Hey, have you ever</p> <p>6 seen this before?</p> <p>7 Did you do that?</p> <p>8 A. I did not talk to any other trustees about</p> <p>9 that.</p> <p>10 Q. Did you do any research? You're a lawyer,</p> <p>11 right?</p> <p>12 A. Yes.</p> <p>13 Q. Did you do any legal research?</p> <p>14 A. Yes.</p> <p>15 Q. What did you find?</p> <p>16 A. I didn't find any cases on point.</p> <p>17 Q. Do you use Westlaw or Lexis or what do you use?</p> <p>18 A. I use Westlaw.</p> <p>19 Q. I punched the term into Westlaw and Lexis. I</p> <p>20 couldn't find a case that had done this before.</p> <p>21 Did you do the same thing? Did you plug</p> <p>22 that phrase in and see if any cases came up on it?</p> <p>23 A. I did and I had the same search result you did.</p> <p>24 Q. Meaning what?</p> <p>25 A. Meaning I did not find any cases that did</p>	<p>1 waiver. That's analogous to this.</p> <p>2 Q. One case. Any other -- was that one case that</p> <p>3 you found?</p> <p>4 A. That was one that I found, yeah.</p> <p>5 Q. Can you think of any others that you found that</p> <p>6 you thought were analogous?</p> <p>7 A. Nothing comes to mind.</p> <p>8 Q. Can you give me the case name?</p> <p>9 A. No. I said I don't remember it.</p> <p>10 Q. Do you have it in your computer? Could you get</p> <p>11 it for me?</p> <p>12 A. I could probably find it somewhere.</p> <p>13 Q. But other than that one case, you can't think</p> <p>14 of one single thing you found that gave you any view,</p> <p>15 and then we could give the Court comfort that this has</p> <p>16 ever been done before?</p> <p>17 A. Exactly like this, no.</p> <p>18 Q. Even close other than that one case?</p> <p>19 A. Yeah, no. As I sit here, no.</p> <p>20 Q. Let's go back to the chart.</p> <p>21 Now, you were explaining to me this chart,</p> <p>22 and we got sidetracked on the administrative expenses of</p> <p>23 the 650. So we're on page 14 of Exhibit 9 -- or docket</p> <p>24 No. 915, page 14. Continue. You're walking us through</p> <p>25 the backup bid. This is First United's.</p>		

14:27:21-14:28:26	Page 145	14:29:27-14:30:16	Page 147
<p>1 Give me the numbers here.</p> <p>2 A. All right. It was purchase cash of 3.5 less the admins, and then that was the net purchase cash.</p> <p>3 And that's what I considered to be the cash that would be available for the unsecured creditors.</p> <p>4 Then you multiply the assumption about the percentages of how much would Connecticut get, how much would the others get. And there's no waiver mechanism under the backup bid.</p> <p>5 Q. Now, you've only got two creditors here, right?</p> <p>6 Is that right?</p> <p>7 A. It's two groups of creditors. It's the Connecticut creditors and everyone else.</p> <p>8 Q. So everyone else is in the gift class share?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Keep going.</p> <p>11 A. All right. And then it shows how much cash from the available cash would make it to that class. And it's \$94,050.</p> <p>12 Q. Okay. So had First United's bid been accepted under this chart here, your backup bid, everybody other than the Connecticut group would have gotten \$94,050?</p> <p>13 A. Right.</p> <p>14 Q. Okay. Now go to the next column.</p> <p>15 A. All right. This is the winning bid, cash</p>		<p>1 this deferred waiver that you're talking about, is not a cash equivalent in any technical sense of that term, wouldn't you?</p> <p>2 MR. WOLFSHOHL: Objection, form.</p> <p>3 A. Right. The waiver is not a cash equivalent.</p> <p>4 That's true.</p> <p>5 BY MR. BROOCKS:</p> <p>6 Q. Okay. So it's a little bit misleading for you to use that phrase. Wouldn't you agree with that?</p> <p>7 Would you think that's -- you'd change that if you could right now?</p> <p>8 MR. WOLFSHOHL: Objection to form.</p> <p>9 A. No, I wouldn't because that's not what this column is showing. This column is showing if it were actually cash, what would happen.</p> <p>10 BY MR. BROOCKS:</p> <p>11 Q. Okay. If it were. Let's make believe it is.</p> <p>12 So keep going. Winning bid, cash equivalent 7 million.</p> <p>13 But that is the joint bidders' number,</p> <p>14 isn't it?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Keep going.</p> <p>17 A. All right. So if cash of 7 million came in as the purchase price less admins, then you would get Connecticut families share, gift class families share.</p>	
14:28:29-14:29:25	Page 146	14:30:20-14:31:39	Page 148
<p>1 equivalent. So it's using as a bogey the 7 million.</p> <p>2 And if it were 7 million cash --</p> <p>3 Q. Which it's not.</p> <p>4 A. Right, which it's not -- you get cash for creditors of 6.35 million.</p> <p>5 Q. I apologize. Why did you call it a cash equivalent?</p> <p>6 A. Because I'm trying to make a noncash item comparable to a cash item.</p> <p>7 Q. Right, no. I know that. I gathered that. But</p> <p>8 a cash equivalent -- strike that. Let me start over.</p> <p>9 You have a financial background, don't</p> <p>10 you?</p> <p>11 A. Some, sure.</p> <p>12 Q. Yeah. And so you know what a cash equivalent</p> <p>13 is in accounting terminology?</p> <p>14 A. Yeah.</p> <p>15 Q. What is it?</p> <p>16 A. I think it's -- actually, I'm not sure. I think it depends on the context.</p> <p>17 Q. Give me some examples of cash equivalents.</p> <p>18 Stocks, bonds?</p> <p>19 A. Deposit accounts. Maybe that's it. I don't know.</p> <p>20 Q. But you would agree with me that the waiver,</p>		<p>1 And then you see that the projection there is \$209,550</p> <p>2 would have gone to the gift class.</p> <p>3 Q. Okay. What's the third column?</p> <p>4 A. The third column is what would have to go -- the third column is figuring out how much of Connecticut's cash they would actually have to give to make it as if the winning bid was -- if they had paid 7 million cash. That's what it's trying to make it apples to apples.</p> <p>5 Q. Now, you say make it as if they paid 7 million.</p> <p>6 That's a little bit inaccurate, isn't it? You're</p> <p>7 talking about focusing on what you're calling the gift</p> <p>8 class's distributable portion?</p> <p>9 A. Yes.</p> <p>10 Q. So you were going to -- your analytical lens,</p> <p>11 if you will, was focused on how much money has to go to</p> <p>12 one group of creditors to make them equivalent to -- as</p> <p>13 if the bid had been 7 million?</p> <p>14 A. That's right.</p> <p>15 Q. And why were you doing that?</p> <p>16 A. I was doing that to see if that was possible,</p> <p>17 if 7 million was really the right thing to compare with.</p> <p>18 Because depending on the assumptions, it might be that Connecticut wouldn't have actually enough cash out of</p> <p>19 the 1.75 to true the other guys up to what they would</p>	

14:31:44-14:32:58	Page 149	14:34:07-14:35:32	Page 151
<p>1 have gotten under a 7 million cash.</p> <p>2 Q. I'm going to restate what I think you just</p> <p>3 said.</p> <p>4 So I hear you saying that you wanted to</p> <p>5 see if the Connecticut families' distributable portion</p> <p>6 was large enough at 7 million so that if they transfer</p> <p>7 or gifted or somehow communicated their part to the</p> <p>8 other guys, the other creditors, the other creditors</p> <p>9 would come out as if the deal had been at 7 million?</p> <p>10 A. That's right.</p> <p>11 Q. Now, have you ever in your career valued a deal</p> <p>12 depending on what one finite group of creditors got and</p> <p>13 put a value on the whole deal based on what one portion</p> <p>14 got?</p> <p>15 A. In a sense, yes.</p> <p>16 Q. In a sense, yes?</p> <p>17 A. Well, in a sense, every case is like that.</p> <p>18 There's a fulcrum class of creditors, and maximizing</p> <p>19 that class is what I try to do in every case. So I make</p> <p>20 decisions based on maximizing that.</p> <p>21 Q. Sure. But I'm asking about you got, using your</p> <p>22 terminology, two classes of creditors. And you're</p> <p>23 saying if Connecticut gives up something and Texas gets</p> <p>24 more or the gift class gets more, that means that the</p> <p>25 transaction value is actually what the gift class would</p>	<p>1 winning bid's actual cash. And then the difference,</p> <p>2 that 173, is what Connecticut would have to chip in to</p> <p>3 make the non-Connecticut creditors as well off as they</p> <p>4 would have been had it been \$7 million cash purchase</p> <p>5 price.</p> <p>6 Q. So in other words, of the 1,063,000 that the</p> <p>7 Connecticut families would have gotten, they have to</p> <p>8 give 173,250 of it somehow to the Texas -- or to the</p> <p>9 gift class?</p> <p>10 A. Yes.</p> <p>11 Q. And that would then bring the gift class up to</p> <p>12 receiving 209,550?</p> <p>13 A. Yes.</p> <p>14 Q. And why do you have on the second column a dash</p> <p>15 here under "distributable proceeds waiver"?</p> <p>16 Why is that just a dash?</p> <p>17 A. Because there isn't a waiver if all of the</p> <p>18 7 million notional consideration is in cash.</p> <p>19 Q. Okay. And you used the \$7 million number again</p> <p>20 because you were saying that is what your estimation of</p> <p>21 the actual winning bid was?</p> <p>22 A. Well, sort of. That's what the joint bidders</p> <p>23 said their bid was valued at, and this was testing to</p> <p>24 see if that works.</p> <p>25 Q. Okay. Now, let's go to the next chart on</p>		
14:33:01-14:34:03	Page 150	14:35:34-14:36:39	Page 152
<p>1 have gotten had they gotten a \$7 million deal. Have you</p> <p>2 ever done something like that before, or is this the</p> <p>3 first time?</p> <p>4 A. First time.</p> <p>5 Q. Why did you do it here?</p> <p>6 A. Because that's what was presented.</p> <p>7 Q. Were you trying to make this deal work for the</p> <p>8 Connecticut plaintiffs?</p> <p>9 A. No.</p> <p>10 Q. You weren't?</p> <p>11 A. No.</p> <p>12 Q. Okay. All right. Now, you've got -- on the</p> <p>13 right-hand column here you've got 36. Walk me through</p> <p>14 these numbers right there.</p> <p>15 What are those numbers that I've</p> <p>16 highlighted? 36,300 and 173, what are those numbers?</p> <p>17 Sorry, let me try to do this a little more</p> <p>18 elegantly here.</p> <p>19 What are those?</p> <p>20 A. So that tells you how much cash Connecticut</p> <p>21 needs to come up with. Because what this does is you</p> <p>22 start with that middle column. And if it were 7 million</p> <p>23 actual dollars paid on the purchase price, the gift</p> <p>24 class would have gotten the 209,550. I say if they need</p> <p>25 to get 209,550, they're already getting 36.3 under the</p>	<p>1 page 15.</p> <p>2 What is this chart and why is it different</p> <p>3 than the one on the previous page?</p> <p>4 A. So this one is changing some assumptions to</p> <p>5 make the backup bidder relatively more attractive. And</p> <p>6 it does that by increasing the administrative costs,</p> <p>7 which reduces the amount of money that goes to creditors</p> <p>8 which, therefore, reduces the amount that Connecticut</p> <p>9 has to give away. And then it changes the percentage of</p> <p>10 the claims pool of Connecticut down to 75 percent which</p> <p>11 also lowers the amount they have to give away.</p> <p>12 And then I apply those -- in this chart,</p> <p>13 it's better to start with the winning bid on the right</p> <p>14 column.</p> <p>15 Q. Well, let's just do it the same way.</p> <p>16 Backup bid, that's First United, right?</p> <p>17 A. Yeah.</p> <p>18 Q. 3.5 million. You've increased the</p> <p>19 administrative costs to 750.</p> <p>20 What is -- how do you account for the</p> <p>21 additional hundred thousand dollars?</p> <p>22 A. It's an estimate. It's not going to be exactly</p> <p>23 650. I thought 750 was on the higher end of a</p> <p>24 reasonable range of what those might be.</p> <p>25 Q. So you just arbitrarily went from 650 on the</p>		

14:36:42-14:37:35	Page 153	14:38:57-14:39:46	Page 155
<p>1 first chart to 750 on the next chart. And why?</p> <p>2 MR. WOLFSHOHL: Objection to form.</p> <p>3 BY MR. BROOCKS:</p> <p>4 Q. Why did you do that?</p> <p>5 A. I increased it to see that even if expenses</p> <p>6 were more than I expect, if they're on a higher end of a</p> <p>7 range of potential outcomes, would Connecticut's bid</p> <p>8 still really be better?</p> <p>9 Q. So just an arbitrary number you pulled out of</p> <p>10 the sky, a hundred thousand?</p> <p>11 MR. WOLFSHOHL: Objection to form.</p> <p>12 A. I wouldn't characterize it as arbitrary.</p> <p>13 BY MR. BROOCKS:</p> <p>14 Q. How would you characterize it?</p> <p>15 A. I'd characterize it as a number I picked that I</p> <p>16 thought was at the higher end of what a reasonable range</p> <p>17 of administrative costs might be.</p> <p>18 Q. Who would the extra hundred thousand in your</p> <p>19 reasonable range have gone to?</p> <p>20 A. I don't know. Any of the categories of costs.</p> <p>21 Q. All right. So then you've got Connecticut</p> <p>22 families' share at 75 percent is 2 million 62 gift class</p> <p>23 share -- why did you call it the gift class share?</p> <p>24 Why did you call it that?</p> <p>25 A. I don't know who came up with that phrase. I</p>	<p>1 to you with an instruction that says, But we want you to</p> <p>2 give it to the other group of creditors?</p> <p>3 MR. WOLFSHOHL: Objection to form.</p> <p>4 BY MR. BROOCKS:</p> <p>5 Q. Is that how it works?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And you're calling the recipients of the</p> <p>8 Connecticut plaintiffs instruction to you a gifted</p> <p>9 class?</p> <p>10 A. Yeah. It would be the class of allowed claims</p> <p>11 that are not Connecticut claims, right.</p> <p>12 Q. But the term you used was gift. That's what</p> <p>13 I'm trying to focus on.</p> <p>14 A. That's the term that's on the page there, yes.</p> <p>15 Q. So the Connecticut plaintiffs, in essence, are</p> <p>16 gifting to the Texas plaintiffs?</p> <p>17 MR. WOLFSHOHL: Objection, form.</p> <p>18 BY MR. BROOCKS:</p> <p>19 Q. Is that a fair way for the Court to understand</p> <p>20 it?</p> <p>21 A. Yeah. They're offering to give a portion of</p> <p>22 their proceeds to another class.</p> <p>23 Q. Yeah. Now, do you have any understanding about</p> <p>24 the negotiations that took place between the Texas and</p> <p>25 the Connecticut families, if any at all?</p>		
14:37:38-14:38:55	Page 154	14:39:51-14:40:32	Page 156
<p>1 mean, they're essentially receiving a gift from</p> <p>2 Connecticut. So it's descriptive, I guess.</p> <p>3 Q. Well, let me jump on that a minute.</p> <p>4 In your understanding of the structure</p> <p>5 you've got here, is the money that comes in being</p> <p>6 distributed to the Connecticut plaintiffs and they are</p> <p>7 gifting personally to the other claimants some money; or</p> <p>8 is it never getting down to them? Is it going directly</p> <p>9 from you to them in your thinking?</p> <p>10 MR. CICACK: Hey, somebody should put</p> <p>11 their phone on mute.</p> <p>12 A. No.</p> <p>13 MS. DRENGA: Object to form as well.</p> <p>14 Sorry.</p> <p>15 A. My understanding is that the amount that this</p> <p>16 waiver is proceeds Connecticut would get that they're</p> <p>17 assigning to me to then be given to the gift class.</p> <p>18 BY MR. BROOCKS:</p> <p>19 Q. So, again, I'm just trying to follow the flow</p> <p>20 of funds. So in your thinking as the deal you put</p> <p>21 together and approved, the money is actually the</p> <p>22 Connecticut plaintiffs'. They are assigning it back to</p> <p>23 you, step 1. Is that right?</p> <p>24 A. Yes.</p> <p>25 Q. So they get a distribution, they assign it back</p>	<p>1 MS. DRENGA: Object to form.</p> <p>2 A. Well, with respect to this bid?</p> <p>3 BY MR. BROOCKS:</p> <p>4 Q. Yeah.</p> <p>5 A. No, none at all.</p> <p>6 Q. Do you know if the Texas guys agreed to it?</p> <p>7 MS. DRENGA: Objection to form.</p> <p>8 BY MR. BROOCKS:</p> <p>9 Q. Do you know?</p> <p>10 A. I don't know.</p> <p>11 Q. You don't know whether they agreed to it or</p> <p>12 not?</p> <p>13 MS. DRENGA: Objection.</p> <p>14 A. No, I don't.</p> <p>15 BY MR. BROOCKS:</p> <p>16 Q. Well, what if they say, No, we don't want it?</p> <p>17 Does that mess up your plan?</p> <p>18 A. Well, they can file an objection if they would</p> <p>19 like to.</p> <p>20 Q. Well, I'm just asking, does it mess up your</p> <p>21 structure if Connecticut or -- I mean, if Texas</p> <p>22 plaintiffs, which, I guess, are in the gift class, say,</p> <p>23 Hang on, we don't want that?</p> <p>24 Does that mess up your structure, cause it</p> <p>25 to not work?</p>		

14:40:34-14:41:47	Page 157	14:42:41-14:43:45	Page 159
<p>1 A. I'd have to think through it again.</p> <p>2 Q. Go ahead. Think it through.</p> <p>3 A. I'm not sure it would because there are</p> <p>4 creditors other than Texas who would benefit. But if</p> <p>5 the entire recipient class -- if everybody other than</p> <p>6 Connecticut, you're saying, said they didn't want</p> <p>7 this --</p> <p>8 Q. Well, Connecticut is going to be the one giving</p> <p>9 the money away, right?</p> <p>10 A. Uh-huh.</p> <p>11 Q. So I'm saying the recipients of the gift, if</p> <p>12 they say, I don't want it, does that mess up your</p> <p>13 structure?</p> <p>14 A. I don't think so.</p> <p>15 Q. Okay. But you hadn't thought about that until</p> <p>16 just now, had you?</p> <p>17 A. Yeah. I hadn't.</p> <p>18 Q. And you have no understanding one way or the</p> <p>19 other whether or not there's any agreements that have</p> <p>20 taken place between any of these creditors to accomplish</p> <p>21 this structure, have you?</p> <p>22 A. Yeah. I'm not aware of anything like that.</p> <p>23 Q. And you haven't asked?</p> <p>24 A. No.</p> <p>25 Q. How many other creditors are there in the gift</p>		<p>1 A. I have thought about it. I don't believe there</p> <p>2 are.</p> <p>3 Q. And why do you believe there are not?</p> <p>4 A. Because it's not increasing the amount of cash</p> <p>5 coming into the estate. So it's not income from the</p> <p>6 estate's perspective.</p> <p>7 Q. Have you researched it?</p> <p>8 A. No.</p> <p>9 Q. Have you asked any experts, accountants or</p> <p>10 lawyers about the tax consequences?</p> <p>11 A. No.</p> <p>12 Q. How about the sales tax consequences? Does</p> <p>13 this gifting affect the sales tax consequences of the</p> <p>14 sale in general?</p> <p>15 A. I don't know.</p> <p>16 Q. Hadn't thought about that, had you?</p> <p>17 A. No, I hadn't.</p> <p>18 Q. Okay. Now, let's keep going here on the chart</p> <p>19 on page 15. Yeah, I guess, 15.</p> <p>20 Now you increased the 650 to 750. Which</p> <p>21 column should we look at next? You tell me.</p> <p>22 A. I'm not sure what you're asking.</p> <p>23 Q. I'm asking you to explain the chart on page 15.</p> <p>24 We've just gone through the backup bid, and I'm asking</p> <p>25 you now, which column would you like to address next?</p>	
14:41:49-14:42:39	Page 158	14:43:51-14:44:51	Page 160
<p>1 class -- strike that. Let me start over.</p> <p>2 How many creditors are there in the gift</p> <p>3 class?</p> <p>4 A. I don't remember.</p> <p>5 Q. Give me a number, just your best judgment.</p> <p>6 A. I don't know. Probably a couple dozen.</p> <p>7 Q. You haven't talked to any of them, have you?</p> <p>8 A. Ever?</p> <p>9 Q. I mean, about this structure, about the deal</p> <p>10 here we're talking about.</p> <p>11 A. No. I haven't talked to anybody about this</p> <p>12 structure.</p> <p>13 Q. So what are the tax consequences of this</p> <p>14 gifting from the Connecticut plaintiffs to the Texas --</p> <p>15 to the gift class?</p> <p>16 Is there income tax consequences?</p> <p>17 A. I don't know.</p> <p>18 Q. You haven't looked at that?</p> <p>19 A. No.</p> <p>20 Q. What about to the estate, are there income tax</p> <p>21 consequences to the estate based on this distribution</p> <p>22 that you're going to make and then the receiving back</p> <p>23 from Connecticut and the gifting down? Are there income</p> <p>24 tax consequences of that?</p> <p>25 Have you thought about that?</p>		<p>1 A. Well, so what we were discussing was the backup</p> <p>2 bid shows you how much cash comes to the backup bidder.</p> <p>3 I thought we had finished because we'd gotten over to</p> <p>4 the third column and I was explaining how you get to the</p> <p>5 173.</p> <p>6 Q. I'm sorry. Maybe I missed.</p> <p>7 A. Oh, you switched to the other chart.</p> <p>8 Q. I turned the page on you. That's 15.</p> <p>9 A. All right.</p> <p>10 Q. Remember we went up to 750 on the</p> <p>11 administrative costs?</p> <p>12 A. Then I started looking at the paper and not the</p> <p>13 screen. Now I'm back with you.</p> <p>14 Q. Fair enough. Which column should we go to</p> <p>15 next, sir, on page 15?</p> <p>16 A. All right. Well, what this shows is under</p> <p>17 these revised assumptions how much cash the gift class</p> <p>18 gets under the backup bid, 687,500.</p> <p>19 Q. Let me help you. Start with the second column</p> <p>20 that says "Winning Bid Cash Equivalent." Okay. Winning</p> <p>21 bid cash equivalent. Now, we saw on the previous page,</p> <p>22 winning bid cash equivalent was 7 million, which is what</p> <p>23 you said you thought the deal was that you took, right?</p> <p>24 A. Yes.</p> <p>25 Q. All right. Now, you've got winning bid cash</p>	

14:44:55-14:46:07	Page 161	14:47:41-14:48:58	Page 163
<p>1 equivalent 4,750,000. How do you get a winning bid of 2 4,750,000 if you thought you had a \$7 million winning 3 bid?</p> <p>4 A. This chart is showing what the maximum cash 5 equivalent winning bid would be given the cash available 6 to Connecticut under their bid.</p> <p>7 Q. Say that again. I didn't follow you. I'm 8 sorry.</p> <p>9 A. The first chart takes 7 million and says if it 10 were 7 million cash, what would the gift class get and 11 how much do you have to add to get to that number?</p> <p>12 Q. Well, I thought you said it was a winning bid 13 of 7 million.</p> <p>14 A. What?</p> <p>15 Q. You said it was the winning bid, 7 million, 16 didn't you?</p> <p>17 A. Yeah.</p> <p>18 Q. All right. And you've got -- on the second 19 chart here on page 15 you call it the winning bid. How 20 did you come up with a winning bid number of 21 4.75 million?</p> <p>22 A. That's the number of cash equivalent that you 23 get if you take all of Connecticut's actual cash and 24 gift it.</p> <p>25 Q. All of the cash from the 7 million?</p>		<p>1 Q. So let me just make sure I'm following you. So 2 we're going to go to the right-hand chart, the winning 3 bid right-hand chart, 1,750,000. Okay?</p> <p>4 And you're going to say, Okay, of the 5 cash, 1.75, which is the actual amount of cash that the 6 joint bidders bid, right, 1.75?</p> <p>7 A. Yes.</p> <p>8 Q. If you divvy that out at 75/25 and the 9 Connecticut people get 750,000 and they give all of that 10 to the other creditors, other creditors now have a 11 million dollars, right?</p> <p>12 A. Yes.</p> <p>13 Q. And now we're over here. Now, the other 14 creditor, what you're calling the gift class, now with a 15 million dollars, you're trying to say -- that's where 16 I'm a little bit losing you.</p> <p>17 So now, with a million dollars, how do you 18 then get to 4.75 from the million?</p> <p>19 A. So if the gift class is getting a million under 20 these ratios, that means Connecticut is getting 21 3 million. So you've got to be able to get to 4 million 22 proceeds for unsecureds, add back the admins, and then 23 you get to a 4.75 purchase price that would be necessary 24 to achieve it.</p> <p>25 Q. I see. So you're saying that if the gift class</p>	
14:46:09-14:47:36	Page 162	14:49:01-14:50:20	Page 164
<p>1 A. No, from the 1.75.</p> <p>2 Q. But if the winning bid is \$7 million, why does 3 that number change to 4.75? I'm just confused about 4 that. Isn't the winning bid \$7 million, as you just 5 said?</p> <p>6 A. Yes.</p> <p>7 Q. Why is it different on this second chart?</p> <p>8 A. It's the purchase cash equivalent number.</p> <p>9 Q. And how did you decrease it from 7 million to 10 4.75 million again?</p> <p>11 A. So I didn't. I backed into this number. I 12 started with the amount of cash from the winning bid, 13 1.75, under these revised assumptions, and saw how much 14 would the gift class get and how much would Connecticut 15 get.</p> <p>16 And Connecticut gets 750,000. The gift 17 class gets 250,000. Now, assuming Connecticut gave all 18 of its money to the gift class, the gift class ends up 19 with a million bucks. What would be the purchase price 20 cash equivalent where they would get a million bucks is 21 the middle column, and that's only 4.75.</p> <p>22 And what I'm trying to show is that even 23 though they said the bid is worth 7 million under a 24 variety of assumptions, it's actually not that great; 25 but it's still much greater than 3.5.</p>		<p>1 got a million dollars and if that was 25 percent of the 2 distributable cash available, then 75 percent would be 3 3 million, which is 4, and then with 750 in expenses, 4 that would mean a \$4.75 million deal?</p> <p>5 A. Yes.</p> <p>6 Q. In what possible way is this relevant?</p> <p>7 A. It's relevant because it demonstrates that 8 there is sufficient cash component of the winning bid 9 such that the waiver is enough to defeat a bid of 10 3.5 million. It's still superior.</p> <p>11 Q. Why did you do it this way?</p> <p>12 I mean, you already knew that from the 13 7 million, didn't you? You knew there was plenty of 14 cash. Why did you have to do it this way, too? I'm 15 just curious?</p> <p>16 A. This way is testing it sort of in reverse. 17 It's using different assumptions that are sort of at the 18 end of the range that would be the least favorable to 19 the winning bidder so that I could satisfy myself that 20 even if my assumptions are off, it actually still is 21 better than the backup bidder.</p> <p>22 Q. So you're saying assuming that the Connecticut 23 plaintiffs got only 75 percent, that would still be 24 enough money that they could give it up to you and you 25 could give it back down to the gift class and distribute</p>	

14:50:22-14:51:32	Page 165	14:52:28-14:53:08	Page 167
<p>1 it out, assuming they'd take it, that they would have 2 gotten enough money such that it would have netted out 3 to a \$4.75 million deal based on what this minority of 4 creditors got or would have gotten hypothetically?</p> <p>5 A. Right.</p> <p>6 Q. Now, you would agree with me, I think you said 7 it was -- their bid was a range, right?</p> <p>8 A. Yeah. That's a way to read part of the way 9 they described it.</p> <p>10 Q. Now, if I understood you a minute ago, the 11 Connecticut plaintiffs were disputing with you your 12 belief that it was a \$7 million -- their offer was 13 7 million.</p> <p>14 Did I hear you correctly?</p> <p>15 MR. WOLFSHOHL: Objection to form.</p> <p>16 BY MR. BROOCKS:</p> <p>17 Q. Let me strike that and start over.</p> <p>18 Did the Connecticut plaintiffs agree with 19 you that they bid \$7 million?</p> <p>20 A. I'm not sure how to answer that because I think 21 you're asking the same question that somebody objected 22 on privilege to.</p> <p>23 Q. Well, let's be clear. I think I can ask -- I 24 think I'm going to be able to ask about -- certainly I'm 25 building a predicate to this. If somebody is going to</p>	<p>1 A. We drafted a sale motion and sent a draft of it 2 to the joint bidders.</p> <p>3 Q. Saying 7 million?</p> <p>4 A. Well, with this analysis that's laid out in the 5 motion and, yes, saying 7 million.</p> <p>6 Q. And somebody called you back and said, Hey, 7 that's not the deal, we didn't give 7 million?</p> <p>8 A. Now, that is the question he objected to 9 before.</p> <p>10 MR. WOLFSHOHL: Yeah, you can answer it.</p> <p>11 THE WITNESS: Oh, I can answer? Okay.</p> <p>12 MR. WOLFSHOHL: Yeah. We're not waiving 13 the common interest privilege. The discussion over the 14 clarification can be discussed.</p> <p>15 THE WITNESS: Okay.</p> <p>16 BY MR. BROOCKS:</p> <p>17 Q. So who is it that you had the conversation 18 with?</p> <p>19 A. There were several lawyers on the call. I 20 think primarily it was Kyle Kimpler.</p> <p>21 Q. Sorry?</p> <p>22 A. It was Kyle Kimpler.</p> <p>23 Q. And who does he represent?</p> <p>24 A. He represents the Connecticut families.</p> <p>25 Q. What did he say?</p>		
14:51:35-14:52:27	Page 166	14:53:09-14:54:23	Page 168
<p>1 assert a privilege, then speak now.</p> <p>2 But is it your understanding that they 3 disputed with you your interpretation of their offer?</p> <p>4 MR. WOLFSHOHL: I object to the form based 5 on the characterization because I don't think that's 6 what was said. I don't think it was said that they 7 disputed it. I think what he said was he contacted them 8 and spoke to them about what his interpretation was.</p> <p>9 That's how I heard the testimony.</p> <p>10 BY MR. BROOCKS:</p> <p>11 Q. Is what Mr. Wolfshohl said right?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So why did you contact them -- strike 14 that.</p> <p>15 Did you contact them with your 16 understanding because you thought there might be a 17 disagreement?</p> <p>18 A. No.</p> <p>19 Q. Why did you contact them about it?</p> <p>20 A. I didn't contact them about it. It came up in 21 another context.</p> <p>22 Q. What was the context of that?</p> <p>23 A. I think it came up for the first time after we 24 circulated a draft of the sale motion.</p> <p>25 Q. Elaborate. What happened?</p>	<p>1 A. He said that he thought -- my understanding is 2 that he thought the waiver amount was really only a 3 hundred thousand more than what the cash equivalent 4 would have been under the First United bid. And I told 5 him, No, I think it's based on the at least 7 million 6 number, which ended up being more money for the 7 creditors.</p> <p>8 Q. So Mr. Kimpler, was he one of the architects of 9 the Connecticut offer to begin with?</p> <p>10 A. I don't know. I think so, but I don't know.</p> <p>11 Q. And so -- well, help the Court understand about 12 the conversation.</p> <p>13 Who said what and when? How did it end?</p> <p>14 I want the details on this. What happened?</p> <p>15 A. It was a pretty brief conversation. I said, I 16 calculate the waiver amount based on a 7 million bid 17 because their bid form says no less than 7 million.</p> <p>18 There's another part that says, you know, 19 at least a hundred thousand more. And that's less cash 20 under most scenarios. So I can see why they would want 21 to pay less cash.</p> <p>22 I said, No, I disagree with that. I 23 accepted the bid as I interpreted it, which was with the 24 7 million.</p> <p>25 Q. Did they say, Oh, okay, you're right. Did they</p>		

14:54:26-14:55:30	Page 169	14:56:25-14:57:16	Page 171
1 Q. say that or, Let's think about it? How did it end? 2 A. I don't think it concluded on that call, but my understanding is they've since agreed with our interpretation. 5 Q. No, no, no. I'm not asking for your understanding. I want to be very specific. 7 So you had a phone conversation. You've talked about you say 7 million. They say, No, that wasn't what we intended. And how did the conversation conclude? 11 A. I think we both stated our positions and then talked about other things. 13 Q. And so that would have been a conversation that happened after this document, document No. 915, which was filed on 11-18, so the conversation you're referring to would have been precipitated by this filing here? Is that right? 18 A. You mean came before it, yeah. 19 Q. How soon before it? This is on a Monday. 20 A. I don't know. Maybe a day or two, maybe the same day. But it was before we filed it. 22 Q. And it was precipitated by what? What precipitated the discussion? 24 A. I think they wanted to have a discussion about the draft of the motion.	1 Q. to accept your understanding? 2 A. I cannot remember when that happened. 3 Q. I mean, was it within the last week? 4 A. I don't know. 5 Q. It could have been? 6 A. Sure. 7 Q. But you had no more conversations with them about it? 9 A. Me personally, no. 10 Q. Me personally as opposed to who? 11 A. Well, me and the people who represent me. 12 Q. Did anybody that represents you have any conversation with them other than -- more than one conversation with them? 15 A. I think so, yes. 16 Q. What was the back and forth as you understand it that was going on between your side and the Connecticut side on this subject? 19 A. I think we were discussing whether my interpretation or their interpretation was correct, but I don't know any more specifics. I wasn't on those calls. 23 Q. How many conversations did you have with anybody on your team about that subject? 25 A. Probably three or four.		
14:55:31-14:56:23	Page 170	14:57:19-14:58:15	Page 172
1 Q. This motion here that became 915? 2 A. Yes. 3 Q. Okay. Now, what happened next on that subject? 4 A. On that call? 5 Q. No. On the subject of you're saying 7 million; they're saying, No, it's a hundred thousand more than First United -- what happened since? 8 A. They've since agreed with my interpretation. 9 Q. I don't want to read your digest version. I don't want you to accelerate to they've since agreed. 11 What happened next? 12 Did you talk to somebody? 13 A. I didn't. 14 Q. Who did? 15 A. My counsel talked to their counsel. 16 Q. When? 17 A. I don't know. 18 Q. When did you find out? 19 A. At some point over the last several days. 20 Q. Can you be more specific over the last several days? 22 A. No. 23 Q. Because we're sitting here on December 5th. So when between November the 18th and December 5th did you finally find out that they were not -- they were going	1 Q. Over a series of several days? 2 A. Yeah. 3 Q. So would it be fair to say that until you had the final conversation, it could have been yesterday as far as you know, you didn't really have a deal fixed with them, did you? 7 MR. WOLFSHOHL: Objection to form. 8 A. Well, I disagree with that. 9 BY MR. BROOCKS: 10 Q. You do? 11 A. (Witness nods head affirmatively.) 12 Q. You think there was a meeting of the minds even though they say they didn't view it the same way you did? You still think there was a meeting of the minds? 15 A. I mean, not on that point, no. 16 Q. Purchase price is probably the most significant part of any deal, isn't it? 18 A. It's an important part of lots of deals. 19 Q. And you didn't have an agreement on the purchase price on November the 18th, did you? 21 A. No. We didn't have an agreement on exactly what the waiver amount would be. 23 Q. I want you to answer my question, sir. 24 Did you or did you not have an agreement on the purchase price on November the 18th? Yes or no?		

14:58:18-14:59:23	Page 173	15:01:13-15:02:14	Page 175
<p>1 A. We did.</p> <p>2 Q. You did. And what was that agreement?</p> <p>3 A. There were two possibilities of how to</p> <p>4 interpret it. I was going to get at least one of them</p> <p>5 and both of them were better than the alternative.</p> <p>6 Q. Maybe I'm not asking my question clearly</p> <p>7 enough. So I'm going to try it one more time.</p> <p>8 Did you or did you not have a meeting of</p> <p>9 the minds with the Connecticut plaintiffs on what the</p> <p>10 purchase price of these assets was going to be on</p> <p>11 November 18th? Not alternatives, what could have been,</p> <p>12 what was better, was there a meeting of the minds</p> <p>13 between the two groups on that date, November 18th?</p> <p>14 A. Yes.</p> <p>15 Q. And what was that meeting of the minds? Tell</p> <p>16 us what it was.</p> <p>17 A. That I was going to get at least a hundred</p> <p>18 thousand more for the other unsecured class.</p> <p>19 Q. But that wasn't your reading of the deal</p> <p>20 accepted. You thought it was 7 million?</p> <p>21 A. No. But I knew they -- that they would at</p> <p>22 least have to contribute that and I thought I --</p> <p>23 Q. And you call that a meeting of the minds?</p> <p>24 A. On that point, yeah.</p> <p>25 Q. Okay. Now, let's go to the chart that they</p>	<p>1 follow you, that this chart was wrong.</p> <p>2 Why was it wrong?</p> <p>3 A. It doesn't count for the administrative costs</p> <p>4 that come off the top.</p> <p>5 Q. So how would you fix it?</p> <p>6 A. I did the other chart that's in our motion.</p> <p>7 Q. Did you realize it was wrong when you first</p> <p>8 read it?</p> <p>9 A. Yes.</p> <p>10 Q. Did you call them up and say, Hey, guys, this</p> <p>11 is wrong?</p> <p>12 A. No.</p> <p>13 Q. Why?</p> <p>14 A. Because I don't think the chart, this</p> <p>15 illustrative chart, means anything in the context of the</p> <p>16 bid. I view this chart as being something that's trying</p> <p>17 to convince me of how great their bid is. I viewed it</p> <p>18 skeptically. I think their bid is good. It's not as</p> <p>19 good as this chart seems to think it is, but it's still</p> <p>20 better than the alternative.</p> <p>21 Q. Now, when you see the words here, that "offer</p> <p>22 up to 7 million," what did you understand the phrase "up</p> <p>23 to 7 million" to mean?</p> <p>24 A. Exactly what it says.</p> <p>25 Q. Well, tell me. "Up to 7 million," in your</p>		
14:59:43-15:01:11	Page 174	15:02:16-15:03:25	Page 176
<p>1 have put in their bid, Exhibit 8.</p> <p>2 A. I believe that's right.</p> <p>3 Q. Let me try to put it up on the screen here.</p> <p>4 Let's see here.</p> <p>5 Now, this is the chart that -- Exhibit 8</p> <p>6 that they put in their final bid to you which you</p> <p>7 accepted. True?</p> <p>8 A. Yes.</p> <p>9 Q. And, in fact, you filed the document with the</p> <p>10 court. This is on -- let's see here. It's not dated on</p> <p>11 this, but you filed a document with the court when you</p> <p>12 got this, saying, We've reached a deal, November the</p> <p>13 13th, I believe it was. 10:30 was your deadline, and</p> <p>14 later that afternoon you filed something with the court</p> <p>15 saying, We've reached a deal, correct?</p> <p>16 A. No. It was the next day, I think.</p> <p>17 Q. I apologize.</p> <p>18 A. And it was not saying we reached a deal. It</p> <p>19 was announcing who the winner of the auction was.</p> <p>20 Q. But it was an announcement based on your</p> <p>21 acceptance of their offer as we see here on Exhibit 8,</p> <p>22 wasn't it?</p> <p>23 A. Based on my determination that this bid was the</p> <p>24 best bid.</p> <p>25 Q. You were explaining to Mr. Cicack, and I didn't</p>	<p>1 parlance, it was 7 million?</p> <p>2 A. Uh-huh. No. The phrase "up to 7 million" does</p> <p>3 not mean 7 million. It's up to 7 million.</p> <p>4 Q. What does that mean to you -- or did it mean?</p> <p>5 A. It means an amount up to 7 million.</p> <p>6 Q. Well, how close up to 7 million did it go?</p> <p>7 A. Up to 7 million is what it says and that's how</p> <p>8 I read it.</p> <p>9 Q. I guess my question is how did you interpret</p> <p>10 "up to 7 million" to mean 7 million?</p> <p>11 A. Ah. In the context of the other information in</p> <p>12 this bid, including the first page that says "not less</p> <p>13 than 7 million." There's reference to the 7 million</p> <p>14 number a few different places. I interpreted them</p> <p>15 together to be 7 million.</p> <p>16 Q. I see. So when they say over here on the first</p> <p>17 page "not less than 7 million" and then over here on the</p> <p>18 second page they say "up to 7 million," you just thought</p> <p>19 that was -- you kind of met them in the middle, up to</p> <p>20 7 million and not less than 7 million. We'll just take</p> <p>21 7 million and you thought that was the deal. Is that</p> <p>22 right?</p> <p>23 MR. WOLFSHOHL: Objection to form.</p> <p>24 A. I took this as a bid of 7 million.</p> <p>25 BY MR. BROOCKS:</p>		

15:03:26-15:04:30	Page 177	15:05:55-15:08:12	Page 179
<p>1 Q. How did you reconcile and rationalize up to 2 7 million and not less than 7 million? How did you 3 rationalize those as making sense on any level?</p> <p>4 MR. WOLFSHOHL: Objection to form.</p> <p>5 A. I interpreted the bid as a whole to be a bid 6 with a cash equivalent of 7 million, and that's the bid 7 that I announced that I accepted.</p> <p>8 BY MR. BROOCKS:</p> <p>9 Q. And what language did you look at in this that 10 you could point us to that enabled you to do that?</p> <p>11 A. It's the whole thing.</p> <p>12 Q. Just the gestalt of the whole document as a 13 whole, just kind of the look and feel of it?</p> <p>14 A. Yeah. I have to take it as a whole. Some of 15 the sentences in here are a little contradictory. Some 16 of them have nothing to do with the considerations that 17 I'm considering. There's a chart that I don't agree 18 with what it's presenting.</p> <p>19 But I asked for highest and best bid.</p> <p>20 They gave me these data points. I interpreted it as a 21 \$7 million bid and that we would have a waiver that 22 would be calculated keyed off of that. And that's what 23 I accepted.</p> <p>24 Q. Now, would it be fair to say you didn't have 25 any of these same questions on First United's bid? That</p>	<p>1 MR. BROOCKS: Give me a second while I 2 pull it up.</p> <p>3 BY MR. BROOCKS:</p> <p>4 Q. This is 915, I guess, the same document we were 5 looking at. This is the GT's original bid. Okay?</p> <p>6 Joint bidders, Global Tetrahedron, Onion. This is their 7 initial bid.</p> <p>8 Well, wait. Maybe it's 5. Yeah, the bid 9 letter. I've got it as a portion of document No. 915.</p> <p>10 Okay. Now, I want to ask you and I want 11 you to take as much time as you need to. But I want you 12 to look at the distributable proceeds waiver section of 13 their initial bid. Okay? And I want you to compare 14 that for us with the distributable waiver portion of the 15 final bid that is 915-17.</p> <p>16 And I'm going to try to do this in a way 17 that -- let me see if I can do this, make it easy for us 18 all to see and follow you.</p> <p>19 Okay. You can see what I'm trying to do.</p> <p>20 I want to look at the original --</p> <p>21 A. I've got the hard copies here.</p> <p>22 Q. Okay, perfect. I want you to tell me where you 23 think those are -- confirm for us that they're the same, 24 in other words.</p> <p>25 A. All right. Let me take a look.</p>		
15:04:33-15:05:52	Page 178	15:08:46-15:10:21	Page 180
<p>1 was pretty straightforward, wasn't it? You understood 2 it perfectly?</p> <p>3 A. No. That one was much easier to analyze.</p> <p>4 Q. And you didn't talk to anybody on the other 5 side, these joint bidders, about the confusion and the 6 confusing wording of their bid, did you?</p> <p>7 A. No.</p> <p>8 Q. You didn't authorize any of your team to have 9 those conversations, did you?</p> <p>10 A. Well, I mean, at what time? Prior to accepting 11 it?</p> <p>12 Q. Yeah.</p> <p>13 A. No, no.</p> <p>14 Q. Now, so just looking again, continuing to look 15 at their Exhibit 8, now, we looked at -- when Mr. Cicack 16 was talking to you earlier about their first offer, 17 their initial bid, which I believe is Exhibit 3 --</p> <p>18 MR. CICACK: 4.</p> <p>19 THE WITNESS: Is it 3 or 4?</p> <p>20 MR. CICACK: 4.</p> <p>21 MR. BROOCKS: Yeah, okay. Here we go.</p> <p>22 THE WITNESS: Which one are we on?</p> <p>23 MR. BROOCKS: Exhibit 4.</p> <p>24 THE WITNESS: Okay. Give me a second. Of 25 course it's at the bottom of the stack. All right.</p>	<p>1 Are you wanting me to compare just that 2 paragraph?</p> <p>3 Q. Well, the concept. Distributable proceeds 4 waiver, other than the one dollar versus a hundred 5 thousand dollars, right, aren't they the same? Is there 6 any difference?</p> <p>7 A. That's what I'm trying to figure out.</p> <p>8 Okay. So your question is are they the 9 same?</p> <p>10 Q. Are they the same? I think originally they 11 were going to top any other competing bid by one dollar, 12 and then in their final they say we're going to top it 13 by a hundred thousand dollars. Other than that 14 difference, was there any other substantive difference 15 that you could see between the two?</p> <p>16 A. No. It doesn't look like it.</p> <p>17 Q. Okay. And you would have looked at that, 18 didn't you, because in the final version it says "as 19 defined in the initial bid," they're actually making 20 kind of an incorporation by reference, right?</p> <p>21 A. Yes.</p> <p>22 Q. So you understood that the waiver, if you will, 23 was identical in their initial bid to their final bid 24 except for the one dollar going up to a hundred thousand 25 dollars, right?</p>		

15:10:24-15:11:22	Page 181	15:12:11-15:13:27	Page 183
<p>1 A. Yes.</p> <p>2 MR. WOLFSHOHL: Objection to form.</p> <p>3 BY MR. BROOCKS:</p> <p>4 Q. Now, what did you think this meant when they</p> <p>5 say "the distributable" -- I'm looking now in the final</p> <p>6 version. This will be Exhibit 915-7.</p> <p>7 It says, "The distributable proceeds</p> <p>8 waiver amount is revised under this final bid so that it</p> <p>9 shall equal an amount necessary for the unsecured</p> <p>10 creditors of FSS, including the Texas families, to</p> <p>11 recover a hundred thousand more, an increase from the</p> <p>12 one dollar"?</p> <p>13 What did you think that meant?</p> <p>14 A. I think it meant that they were saying a</p> <p>15 hundred thousand more than they would have gotten under</p> <p>16 an alternative bid.</p> <p>17 Q. But that's not what you understood their deal</p> <p>18 to be in total? You thought it was 7 million, not a</p> <p>19 hundred thousand more?</p> <p>20 A. Well, what they're saying here is it's not just</p> <p>21 one dollar now; it's a hundred thousand dollars more</p> <p>22 than it would have been under an alternative bid. But</p> <p>23 at the time they submit this they have no idea what the</p> <p>24 other bids are, and they give this whole range, saying,</p> <p>25 well, maybe if it's 2 or maybe if it's 7, this is how</p>		<p>1 the one call that we had talked about.</p> <p>2 BY MR. BROOCKS:</p> <p>3 Q. And then there were several calls, I think you</p> <p>4 testified, after that too, right?</p> <p>5 A. Yeah. I think there were other calls with my</p> <p>6 counsel but I don't know how many.</p> <p>7 Q. Did the Connecticut plaintiffs try to negotiate</p> <p>8 with you guys to your understanding at all?</p> <p>9 A. No.</p> <p>10 Q. Okay. Now, they just ultimately said, Okay,</p> <p>11 Chris, we'll do it your way?</p> <p>12 A. I think they agreed with my interpretation.</p> <p>13 Q. Okay. And then based on -- now I'm looking</p> <p>14 again at 915-7. Based on your interpretation, they put</p> <p>15 a value of \$7 million -- let me see if I can do this</p> <p>16 better.</p> <p>17 They put a \$7 million valuation on their</p> <p>18 offer, right?</p> <p>19 A. Yes.</p> <p>20 Q. Let me highlight this if I can. Here we go.</p> <p>21 And how did you understand they came up</p> <p>22 with that?</p> <p>23 A. They essentially quadrupled the cash amount.</p> <p>24 In their thinking, with the 75/25 split of the claims</p> <p>25 pool, Connecticut has three times as much as the other</p>	
15:11:25-15:12:08	Page 182	15:13:29-15:14:50	Page 184
<p>1 great it would be.</p> <p>2 So I interpret them to say, I'll give you</p> <p>3 a hundred thousand dollars more depending on what the</p> <p>4 other one is, up to some ceiling. And I say, Give me</p> <p>5 your highest and best, and somebody says, Well, sure,</p> <p>6 it's more than some number I don't know, I'm going to</p> <p>7 take the top of that range.</p> <p>8 And that's how I interpret this.</p> <p>9 Q. That's how you interpreted it?</p> <p>10 A. That's right.</p> <p>11 Q. But that's not what they said, is it?</p> <p>12 A. In that sentence that's not what they said, but</p> <p>13 it is what they said on the first page, where they say</p> <p>14 not less than 7 million.</p> <p>15 Q. Uh-huh. And this was part of the discussion</p> <p>16 that you had with them when you had that telephone call</p> <p>17 sometime after the 18th, right? And y'all are framing</p> <p>18 your positions as to what they offered and what you</p> <p>19 thought they offered?</p> <p>20 MR. WOLFSHOHL: Objection to form.</p> <p>21 BY MR. BROOCKS:</p> <p>22 Q. Is that fair?</p> <p>23 MR. WOLFSHOHL: It misstates the</p> <p>24 testimony.</p> <p>25 A. I thought the call was before then but yeah,</p>		<p>1 unsecureds. So they can effectively multiply by 4 the</p> <p>2 effect of the cash purchase price.</p> <p>3 Q. Well, so how did they come up with 7 million?</p> <p>4 A. They took 1.75, assumed that they were going to</p> <p>5 get three-quarters of it, assumed that they gifted that</p> <p>6 to the other creditors, and then that is the equivalent</p> <p>7 as if it had been 7 million cash.</p> <p>8 Q. Okay. So if you go back to their initial</p> <p>9 offer, which is 915-4 -- 915-5, I guess, what was the</p> <p>10 face value of this offer with the same concepts if it's</p> <p>11 a buck?</p> <p>12 A. I think they describe it in their letter.</p> <p>13 Yeah. It's the same multiple. It's 4 million.</p> <p>14 Q. I'm sorry. Say that again.</p> <p>15 A. They calculate it --</p> <p>16 Q. Let me strike. I apologize for talking over</p> <p>17 you.</p> <p>18 The original bid, the initial bid they</p> <p>19 submitted, which is 915-5, what was the grossed-up</p> <p>20 amount for that initial bid?</p> <p>21 A. 4.</p> <p>22 Q. 4 million. Where do you see that?</p> <p>23 A. So they describe it -- it's the same math</p> <p>24 because it's a \$1 million bid with a 4 multiplier. But</p> <p>25 if you look at page 4 of their initial bid, they sort of</p>	

15:14:53-15:15:58	Page 185	15:16:55-15:17:45	Page 187
<p>1 describe their thinking.</p> <p>2 Q. And so based on this, you're extracting and</p> <p>3 deriving a --</p> <p>4 A. It's there.</p> <p>5 Q. Where?</p> <p>6 A. The last paragraph there on your screen.</p> <p>7 Q. Tell me where to go.</p> <p>8 A. Full paragraph, "Through implementation of the</p> <p>9 distributable proceeds waiver ... under a competing bid</p> <p>10 for an amount up to 4 million and even higher amounts in</p> <p>11 the event of a cash consideration."</p> <p>12 So that's where they say the 4 million.</p> <p>13 Q. I see. Okay. And that's how you understood</p> <p>14 it?</p> <p>15 A. I mean, I disagree that it's worth that much;</p> <p>16 but that's how I understood they were presenting their</p> <p>17 offer.</p> <p>18 Q. Okay. Good. Thank you.</p> <p>19 Now, if I understood you correctly, you</p> <p>20 know the Connecticut plaintiffs have a 1-point-something</p> <p>21 billion dollar judgment against Mr. Jones in Connecticut</p> <p>22 and that's under appeal?</p> <p>23 A. Yeah. I think there's several different</p> <p>24 judgments that add up to that amount.</p> <p>25 Q. Yeah. And you know that irrespective of what</p>	<p>1 was pending before the conversion they could have.</p> <p>2 Q. Okay. Could have. But what's the relevance of</p> <p>3 that point right now? FSS is not in bankruptcy.</p> <p>4 A. Well, you said I had no analysis and I'm</p> <p>5 telling you I looked at a case and saw a history that in</p> <p>6 a very contentious case a year and a half went by, and</p> <p>7 nobody raised the possibility that, oh, my goodness,</p> <p>8 these judgments are subject to some really great</p> <p>9 appellate argument.</p> <p>10 Q. Okay. So you think because in your mind</p> <p>11 somebody should have filed something on FSS and didn't,</p> <p>12 that, therefore, the judgments are meritorious? Is that</p> <p>13 what you're thinking?</p> <p>14 MR. WOLFSHOHL: Objection to form.</p> <p>15 A. No. I think they're likely to be allowed</p> <p>16 claims.</p> <p>17 BY MR. BROOCKS:</p> <p>18 Q. Do you know anything about libel law?</p> <p>19 A. No.</p> <p>20 Q. Do you know anything about the constitutional</p> <p>21 protection that's afforded to a media defendant, sir?</p> <p>22 A. Well, I shouldn't say no. I'm not an expert in</p> <p>23 it. I have an understanding of what those claims are.</p> <p>24 Q. Have you ever read New York Times v. Sullivan?</p> <p>25 Have you ever read that case?</p>		
15:16:00-15:16:53	Page 186	15:17:47-15:18:20	Page 188
<p>1 the Court of Appeals does, it can go to the Connecticut</p> <p>2 Supreme Court and then the United States Supreme Court,</p> <p>3 right?</p> <p>4 A. I don't know all the procedures available. I</p> <p>5 understand they're on appeal.</p> <p>6 Q. But you've never looked at any of the</p> <p>7 underlying issues that are on appeal or are the subject</p> <p>8 of that Connecticut case, have you?</p> <p>9 A. No.</p> <p>10 Q. And you don't have any way of reasonably</p> <p>11 handicapping whether or not this thing will be sustained</p> <p>12 by any court, do you?</p> <p>13 A. I disagree with that.</p> <p>14 Q. Tell us what your thought is.</p> <p>15 A. Well, claims are filed; and they're liquidated</p> <p>16 judgments. And those are prima facie correct amounts in</p> <p>17 the bankruptcy case. And in a year and a half of a</p> <p>18 pretty contentious case nobody objected to them.</p> <p>19 Q. Well, Alex Jones has, you know that?</p> <p>20 A. He didn't object to the FSS claims.</p> <p>21 Q. Well, FSS aren't in bankruptcy, are they?</p> <p>22 A. Well, not anymore.</p> <p>23 Q. So why would someone object to a claim for an</p> <p>24 entity that isn't in bankruptcy?</p> <p>25 A. Well, during the year and a half that the case</p>	<p>1 MR. WOLFSHOHL: Objection to form.</p> <p>2 A. I read it in law school. I don't know if I've</p> <p>3 read it since.</p> <p>4 BY MR. BROOCKS:</p> <p>5 Q. Have you ever read Gertz? Have you read that</p> <p>6 case?</p> <p>7 A. That sounds familiar.</p> <p>8 Q. Milkovich?</p> <p>9 A. I don't know.</p> <p>10 Q. You know that in United States Supreme Court</p> <p>11 jurisprudence that -- strike that question.</p> <p>12 You know Alex Jones is a media defendant,</p> <p>13 isn't he?</p> <p>14 MR. WOLFSHOHL: Objection to form.</p> <p>15 A. I don't know whether he is or not.</p> <p>16 BY MR. BROOCKS:</p> <p>17 Q. Is that important?</p> <p>18 MR. WOLFSHOHL: Objection to form.</p> <p>19 A. No, not for this.</p> <p>20 BY MR. BROOCKS:</p> <p>21 Q. Not for this. Not for the validity of the</p> <p>22 judgments entered against him?</p> <p>23 MR. WOLFSHOHL: Objection to form.</p> <p>24 A. It might be relevant to the validity of the</p> <p>25 judgments but not from a consideration of the</p>		

15:18:26-15:19:22	Page 189	15:19:59-15:20:59	Page 191
<p>1 information I have today which bid is better. It's not 2 relevant to that.</p> <p>3 BY MR. BROOCKS:</p> <p>4 Q. Okay. But the Connecticut plaintiffs are 5 foregoing a distribution from you based upon a 6 presumption that they're entitled to something, aren't 7 they?</p> <p>8 A. Yes.</p> <p>9 Q. And if it comes back that the United States 10 Supreme Court says or this Bankruptcy Court says that 11 the law wasn't followed, these are unwaivable Supreme 12 Court mandates that require, for example -- strike that. 13 Let me come at it a different way. 14 You know New York Times v. Sullivan says 15 that a media defendant cannot be found to have committed 16 libel unless the plaintiffs here, the Connecticut 17 family, prove by clear and convincing evidence malice. 18 You know that's the law, don't you?</p> <p>19 MR. WOLFSHOHL: Objection to form.</p> <p>20 MR. PATERSON: Objection to form.</p> <p>21 MR. WOLFSHOHL: Calls for a legal 22 conclusion.</p> <p>23 BY MR. BROOCKS:</p> <p>24 Q. You know that's the law, don't you?</p> <p>25 MR. PATERSON: Objection, form.</p>		<p>1 sir?</p> <p>2 MR. WOLFSHOHL: Objection to form.</p> <p>3 A. I don't think so.</p> <p>4 BY MR. BROOCKS:</p> <p>5 Q. Have you been effectively running FSS for how 6 long?</p> <p>7 MR. WOLFSHOHL: Objection to form.</p> <p>8 BY MR. BROOCKS:</p> <p>9 Q. Let me start over.</p> <p>10 Have you been running FSS?</p> <p>11 A. I don't know how to answer that.</p> <p>12 Q. Why don't you try truthfully.</p> <p>13 A. I have been put in control of the FSS assets.</p> <p>14 Since my appointment, FSS has continued to run under essentially the same management of Mr. Jones.</p> <p>15 Q. Are you overseeing it?</p> <p>16 A. Yes.</p> <p>17 Q. Have you ever looked at Google Analytics with respect to FSS?</p> <p>18 A. No.</p> <p>19 Q. Ever asked about it?</p> <p>20 A. No.</p> <p>21 Q. Do you know what it is?</p> <p>22 A. No.</p> <p>23 Q. Have you ever used it at all in any of your</p>	
15:19:23-15:19:57	Page 190	15:21:01-15:22:04	Page 192
<p>1 A. I don't know. And I think I said I don't really remember New York Times against Sullivan. I remember having read it. I don't remember what it said or what's in it.</p> <p>5 BY MR. BROOCKS:</p> <p>6 Q. I'm just kind of jogging neurons from your law 7 school days. You don't really know?</p> <p>8 A. I don't know the answer to your question.</p> <p>9 Q. Do you know why this judge in Connecticut put 10 the death penalty sanction on Mr. Jones? Do you know 11 why she did that?</p> <p>12 MR. WOLFSHOHL: Objection to form.</p> <p>13 A. My understanding is it was in response to discovery abuses.</p> <p>15 BY MR. BROOCKS:</p> <p>16 Q. Is that all you know?</p> <p>17 A. Yeah.</p> <p>18 Q. That's not relevant to you at all to know the 19 three reasons that she gave on November 15th of 2021 why 20 she did what she did?</p> <p>21 MR. WOLFSHOHL: Objection to form.</p> <p>22 BY MR. BROOCKS:</p> <p>23 Q. Not relevant?</p> <p>24 A. No.</p> <p>25 Q. Have you ever used Google Analytics before,</p>		<p>1 businesses?</p> <p>2 A. No.</p> <p>3 Q. I'm sorry. Do you even know what it is?</p> <p>4 A. Yeah, I have no idea what it is.</p> <p>5 Q. Okay. How many companies would you say you've 6 been a trustee of, where you've supervised kind of 7 the -- given oversight to the operations?</p> <p>8 A. Probably a couple dozen.</p> <p>9 Q. Okay. But if this Connecticut judgment goes 10 away, then doesn't the consideration that they're 11 waiving go away, too?</p> <p>12 MR. WOLFSHOHL: Objection to form.</p> <p>13 A. It would depend which judgment went away and why.</p> <p>15 BY MR. BROOCKS:</p> <p>16 Q. Let's say all the Connecticut judgments go 17 away, that some court says that the law was not followed 18 and those judgments are invalid. I'll give you an 19 example.</p> <p>20 Judge Lopez in his opinion cites 21 intentional infliction of emotional distress, which 22 constitutes \$560 million of the damages awarded to these 23 Connecticut plaintiffs. You know that, right?</p> <p>24 Does that sound familiar?</p> <p>25 A. What was your question?</p>	

15:22:06-15:22:49	Page 193	15:23:36-15:24:25	Page 195
1 Q. You know that the Connecticut plaintiffs got 2 over -- collectively 560 some-odd million dollars based 3 on intentional infliction of emotional distress. You 4 know that, don't you?		1 A. If the judgments goes away, that's one thing. 2 But for their waiver to not have value, they would have 3 to not have allowed claims. I'm not sure that's exactly 4 the same thing.	
5 A. That sounds right.		5 Q. Okay. So your presumption is that they have -- 6 their claims are allowed. That's your assumption?	
6 Q. And you know that the United States Supreme 7 Court has said that the grounds for intentional 8 infliction are the same for a media defendant as 9 New York Times v. Sullivan.		7 A. Yes.	
10 You know that, don't you?		8 Q. Let's assume they're not allowed.	
11 MR. PATERSON: Object to form.		9 A. Okay.	
12 BY MR. BROOCKS:		10 Q. But they've been objected to. What would your 11 opinion be then?	
13 Q. Do you know that?		12 A. Well, an objection doesn't mean they're not 13 allowed.	
14 A. I don't know that.		14 Q. It hasn't been determined yet, has it?	
15 Q. But you know that "knew or should have known" 16 negligence standard -- that's a negligence standard, 17 isn't it, "knew or should have known"?		15 A. Well, there is no objection to the FSS claims.	
18 MR. PATERSON: Object to form. Calls for 19 legal conclusion.		16 Q. But there is no FSS in bankruptcy, right?	
20 BY MR. BROOCKS:		17 Let's focus on Alex. If Alex Jones has 18 properly objected -- I'm just asking you 19 hypothetically -- he's objected to these claims, they're 20 not allowed, are they, as to him?	
21 Q. Are you a lawyer, sir?		21 MR. WOLFSHOHL: Objection to form.	
22 A. I was waiting for the objection.		22 A. I mean, without any other information, yes. I 23 think that sounds right.	
23 Q. He did. I'm asking you a question.		24 BY MR. BROOCKS:	
24 Are you a lawyer?		25 Q. Okay. And if the Connecticut judgments go	
25 A. Yeah.			
15:22:49-15:23:36	Page 194	15:24:29-15:25:31	Page 196
1 Q. Okay. Do you ever make legal conclusions when 2 you do your business?		1 away, irrespective of what a court of appeals might do, 2 irrespective. I'm talking about as it works its way 3 through the United States Supreme Court, doesn't that 4 mean -- and I think you agreed with me, but that doesn't 5 mean that the entirety of their quote/unquote waiver is 6 worthless?	
3 MR. WOLFSHOHL: Objection, form.		7 A. Yeah. And just as I understand it, if the 8 Connecticut plaintiffs ultimately have no valid claims 9 against the FSS assets, then yeah, the waiver is	
4 BY MR. BROOCKS:		10 worthless because the waiver is based on the claims that 11 they would have received from the FSS assets.	
5 Q. Sometimes?		12 Q. And I'm going to come back to that in a moment.	
6 A. Yes.		13 But if the assets are sold to the	
7 Q. Okay. Is "knew or should have known" the 8 language of negligence?		14 Connecticut plaintiffs in some joint venture with Onion, 15 they're being sold to the joint bidders, right? That's	
9 MR. WOLFSHOHL: Objection to form.		16 the Connecticut plaintiffs.	
10 MR. PATERSON: Object to form.		17 You furrowed your brow at me.	
11 BY MR. BROOCKS:		18 That's with the buyer, isn't it?	
12 Q. In your experience?		19 A. I'm trying to understand your question.	
13 A. I need some context there. I don't know what 14 you're talking about.		20 Q. Let me start over. The joint bidders consist	
15 Q. Well, let's keep going.		21 of, you know, Global Tetrahedron and the Connecticut	
16 If the judgment of the Connecticut		22 plaintiffs collectively?	
17 plaintiffs goes away because the wrong standards were		23 A. Yes.	
18 used, the Constitution's mandates were not followed,		24 Q. Okay. If the Connecticut plaintiffs go away,	
19 doesn't that mean that the Connecticut plaintiffs'		25 their judgment goes away, they got zero, the waiver is	
20 waiver quote/unquote is worthless?			
21 They're not waiving anything. They don't			
22 have anything to waive if it goes away, right?			
23 A. I want to be careful. I agree with what you're 24 saying but I want to be precise.			
25 Q. Of course.			

15:25:35-15:26:24	Page 197	15:27:20-15:28:04	Page 199
<p>1 worth nothing. You said that yourself, right?</p> <p>2 A. Right. If they don't have allowed claims with 3 respect to FSS assets, their waiver is not worth 4 anything because it's based on the proceeds from those 5 assets.</p> <p>6 Q. But this sale, if it's approved on Monday, will 7 have already gone through, right, and Mr. Jones will be 8 deprived of his assets as well as FSS's. Isn't that 9 right?</p> <p>10 A. I'm not sure Jones would be deprived of 11 anything. I don't understand your question.</p> <p>12 Q. So you're saying right now that nothing 13 belonging to Alex Jones is being sold on Monday?</p> <p>14 Nothing?</p> <p>15 A. These are assets of FSS.</p> <p>16 Q. Nothing belonging to Alex Jones? There's 17 nothing in there that belongs to him?</p> <p>18 A. Well, by definition, I can't sell anything 19 that's not part of the bankruptcy asset.</p> <p>20 Q. But FSS itself is not in bankruptcy. You've 21 agreed with me on that, I think, right?</p> <p>22 A. No. The FSS assets are in the Chapter 7 23 bankruptcy case.</p> <p>24 Q. For Alex Jones?</p> <p>25 A. Yes.</p>	<p>1 Q. Who's the manager of that LLC?</p> <p>2 A. I think the managing member is Alex Jones.</p> <p>3 Q. I didn't say managing member; I said manager.</p> <p>4 A. Oh, the manager? I think that might also be 5 Alex Jones.</p> <p>6 Q. You know there's a difference between a manager 7 and a member of an LLC, don't you?</p> <p>8 A. Yes.</p> <p>9 Q. What is the difference?</p> <p>10 A. I think the manager is just an office and the 11 managing member is somebody who also owns it.</p> <p>12 Q. Well, the managers -- I'll correct you. The 13 managers are just like the board of directors. It's 14 just the managers.</p> <p>15 A. Okay.</p> <p>16 Q. Then the members are like stockholders. Okay?</p> <p>17 You can just accept that.</p> <p>18 Now, have you seen any documentation that 19 would remove Alex Jones as the manager of FSS?</p> <p>20 A. No.</p> <p>21 Q. Have you seen any corporate documentation that 22 would -- or anything from the court -- let me strike 23 that.</p> <p>24 Have you seen anything from this Court 25 that rationalizes why an LLC, the assets of an LLC would</p>		
15:26:24-15:27:19	Page 198	15:28:11-15:29:06	Page 200
<p>1 Q. Okay. But I'm going to come back to that, but 2 I'm tempted to dive into it. Let me just try to make 3 this point real quick, which is, if this transaction 4 goes through, it will be virtually impossible to undo it 5 even if the judgments go away, right?</p> <p>6 A. I don't know that one way or the other.</p> <p>7 Q. You don't have an opinion one way or the other?</p> <p>8 A. As I sit here right now, no, I don't know.</p> <p>9 Q. Well, let's talk about this thing about you say 10 the assets of FSS. You're the custodian of those 11 assets, right? What would you call yourself?</p> <p>12 A. I'm the trustee.</p> <p>13 Q. Okay. Now, do you do corporate law?</p> <p>14 A. Sometimes. What are you talking about?</p> <p>15 Q. Well, the Texas Business Organizations Code. 16 I'll be very precise about that.</p> <p>17 Do you know anything about that?</p> <p>18 A. Some things.</p> <p>19 Q. You know that applies to limited liability 20 companies. You know that, don't you?</p> <p>21 MR. WOLFSHOHL: Objection to form.</p> <p>22 A. A Texas LLC, I would think so.</p> <p>23 BY MR. BROOCKS:</p> <p>24 Q. And FSS is a Texas LLC, isn't it?</p> <p>25 A. Yes.</p>	<p>1 be deemed to be the assets of the individual owner of 2 the -- the member of the LLC? Have you ever seen any 3 analysis as to how that works?</p> <p>4 MR. WOLFSHOHL: Objection, form.</p> <p>5 A. Yes.</p> <p>6 BY MR. BROOCKS:</p> <p>7 Q. What have you seen?</p> <p>8 A. I've seen analysis provided to me by my 9 counsel.</p> <p>10 Q. I said from the court.</p> <p>11 A. From the court, no.</p> <p>12 Q. So you've never seen anything that would, say, 13 for example, pierce the corporate veil or hold Alex 14 Jones and FSS as alter egos such that the assets of the 15 one become the other? You've never seen anything like 16 that from a court, have you?</p> <p>17 A. An analysis of it, no.</p> <p>18 Q. How is it then that you believe that the -- 19 well, strike that.</p> <p>20 Do you believe that the Texas Business 21 Organizations Code is irrelevant to what you're doing?</p> <p>22 Do you believe that?</p> <p>23 A. No.</p> <p>24 Q. In fact, if the TBOC requires Alex Jones' 25 consent as the manager to a sale of substantially all of</p>		

15:29:09-15:29:59	Page 201	15:30:56-15:31:50	Page 203		
<p>1 FSS's assets you don't have that consent, do you?</p> <p>2 MR. WOLFSHOHL: Objection to form.</p> <p>3 A. I don't know.</p> <p>4 BY MR. BROOCKS:</p> <p>5 Q. You don't know whether you have his consent or</p> <p>6 not?</p> <p>7 A. No. I haven't asked.</p> <p>8 Q. Okay. You don't have it then, do you?</p> <p>9 A. I mean, I'm pretty sure he doesn't want this</p> <p>10 sale to happen because you're asking me these questions.</p> <p>11 Q. Right. That's my point is that if the manager</p> <p>12 of an LLC has to be consenting on a sale of -- strike</p> <p>13 that.</p> <p>14 Let me come at it a different way.</p> <p>15 You would agree with me that the</p> <p>16 transaction you're contemplating is a sale of</p> <p>17 substantially all of the assets of FSS, wouldn't you?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And you don't have the manager's consent</p> <p>20 to that, do you?</p> <p>21 A. I don't have Alex Jones' consent.</p> <p>22 Q. Isn't he the manager?</p> <p>23 A. I think at one time he was. I don't know if he</p> <p>24 is now.</p> <p>25 Q. Who's the manager now?</p>	<p>1 properly structured where all of the assets are being</p> <p>2 sold when neither the members nor the managers have</p> <p>3 approved it. I'm just curious about that.</p> <p>4 MR. WOLFSHOHL: Objection to form.</p> <p>5 BY MR. BROOCKS:</p> <p>6 Q. Can you help me understand where the Texas</p> <p>7 Business Organizations Code plays a role in these</p> <p>8 processes at all?</p> <p>9 MR. WOLFSHOHL: Objection to form.</p> <p>10 A. No.</p> <p>11 BY MR. BROOCKS:</p> <p>12 Q. You just don't know? You never thought about</p> <p>13 it at all, have you?</p> <p>14 A. I've thought about it. I don't know the</p> <p>15 answer.</p> <p>16 Q. Okay. Now, you said a minute ago when</p> <p>17 Mr. Cicack was talking to you about it, he called you --</p> <p>18 or you talked to him during this process and you said --</p> <p>19 you assured him, I think you said, that there would be</p> <p>20 no credit bids from the Connecticut plaintiffs. They</p> <p>21 would not be allowed to credit bid their judgment, if</p> <p>22 you will, in the purchase. And you said yes, I believe</p> <p>23 I said that.</p> <p>24 I think I heard you. Tell me if I'm</p> <p>25 wrong.</p>	15:30:02-15:30:53	Page 202	15:31:51-15:33:07	Page 204
<p>1 A. I don't know the answer to that question.</p> <p>2 Q. Who's the member now?</p> <p>3 A. I think you're asking me a question that I -- I</p> <p>4 don't know how to answer that question.</p> <p>5 Q. Well, truthfully. Just what do you think?</p> <p>6 A. Well, the truth is I don't know but you don't</p> <p>7 seem satisfied with that.</p> <p>8 Q. Well, you didn't say you don't know. You said,</p> <p>9 I don't know how to answer it.</p> <p>10 A. Okay. I don't know.</p> <p>11 Q. You're not the member, are you, sir?</p> <p>12 MR. WOLFSHOHL: Objection, form.</p> <p>13 A. I think I might be.</p> <p>14 BY MR. BROOCKS:</p> <p>15 Q. Who would know?</p> <p>16 A. I'm not sure it matters. The process I'm doing</p> <p>17 is based on the authority under the bankruptcy code and</p> <p>18 Judge Lopez's order saying the assets of FSS are under</p> <p>19 my control as trustee.</p> <p>20 Q. And I'm going to come to the question, to the</p> <p>21 punch line here, in a minute, whether or not that's been</p> <p>22 a fully informed order. Because if you're not the</p> <p>23 manager and you're not the member and at most you're an</p> <p>24 assignee of a membership interest, I'm curious as to how</p> <p>25 you think that the proper structure -- how this is</p>	<p>1 A. Yeah. I think I said something like that early</p> <p>2 on.</p> <p>3 Q. Okay. Now, what is the difference between a</p> <p>4 credit bid in your -- strike that.</p> <p>5 What is a credit bid as you use that term?</p> <p>6 A. I understand a credit bid to be a right that a</p> <p>7 secured creditor has to bid the value of their</p> <p>8 collateral in lieu of cash on an asset.</p> <p>9 Q. So, in other words, to give a claim or to give</p> <p>10 up a portion of their claim in bidding on assets?</p> <p>11 A. Yeah. Their claim on the collateral itself,</p> <p>12 right.</p> <p>13 Q. And how is that different than what is</p> <p>14 happening here?</p> <p>15 A. Well, here the Connecticut families are not</p> <p>16 secured creditors. They don't have a claim on the</p> <p>17 assets of FSS other than their claim in the bankruptcy.</p> <p>18 So they're not credit bidding on the assets being sold</p> <p>19 in that sense. They're not using the value of the</p> <p>20 assets for their bid.</p> <p>21 What they're doing is using the value of</p> <p>22 the cash they would get from this process and giving</p> <p>23 that to other creditors.</p> <p>24 Q. And you knew -- when Mr. Cicack asked you that</p> <p>25 question, you knew what he was trying to get to, didn't</p>				

15:33:10-15:33:45	Page 205	15:35:06-15:36:18	Page 207
<p>1 you?</p> <p>2 MR. WOLFSHOHL: Objection to form.</p> <p>3 A. I'm not sure I did.</p> <p>4 BY MR. BROOCKS:</p> <p>5 Q. What did you think? What did you think he was</p> <p>6 trying to get to?</p> <p>7 A. I thought he was asking if I expected there to</p> <p>8 be credit bidding and I didn't because there are no</p> <p>9 secured creditors.</p> <p>10 Q. But you knew what they were going to do because</p> <p>11 you had already gotten the joint bidders' initial bid,</p> <p>12 hadn't you?</p> <p>13 MR. WOLFSHOHL: Objection to form.</p> <p>14 A. No. That's not true.</p> <p>15 MR. WOLFSHOHL: Mischaracterizing the</p> <p>16 testimony.</p> <p>17 BY MR. BROOCKS:</p> <p>18 Q. Excuse me. This conversation happened before</p> <p>19 the credit bid came in, the first one -- I'm sorry.</p> <p>20 Strike that. Start over.</p> <p>21 Happened before the joint bidders' first</p> <p>22 bid came in?</p> <p>23 A. Long before, yes.</p> <p>24 Q. Long before. Now, and when you saw the joint</p> <p>25 bid come in, saw what they were doing using some of the</p>		<p>1 many other bidders there are, what kind of consideration</p> <p>2 they're offering, and what kind of lots they're bidding</p> <p>3 on the better, because that incentivizes each bidder to</p> <p>4 really offer as much as they're able to.</p> <p>5 Q. And it keeps one of the bidders from saying,</p> <p>6 well, hell, if bidder A is -- I'm bidder B. If bidder A</p> <p>7 is coming up with \$500,000, I'm going to incrementally</p> <p>8 increase that just a little bit more. That's what</p> <p>9 you're trying to avoid.</p> <p>10 You want the best offer, not just some</p> <p>11 incremental increase is what I think I'm hearing you</p> <p>12 say?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And you felt like your structure</p> <p>15 accomplished that?</p> <p>16 A. Yeah.</p> <p>17 Q. Now, tell me again why you decided to go --</p> <p>18 strike that.</p> <p>19 You would agree with me that your original</p> <p>20 filings in this case told the judge you wanted to have a</p> <p>21 live outcry auction, right?</p> <p>22 A. No.</p> <p>23 Q. You didn't agree to that. You don't agree to</p> <p>24 that?</p> <p>25 A. No.</p>	
15:33:49-15:35:02	Page 206	15:36:26-15:38:13	Page 208
<p>1 Connecticut creditors' judgment, you didn't feel the</p> <p>2 need to call Mr. Cicack and explain to him, Hey, let me</p> <p>3 just clarify what actually their bid is looking like?</p> <p>4 You didn't feel the need to do that, did you?</p> <p>5 A. No.</p> <p>6 Q. Now, you talked about several times not</p> <p>7 disclosing what one bidder is doing to other bidders</p> <p>8 because you wanted to ensure top dollar. I was struck</p> <p>9 by that comment.</p> <p>10 You didn't disclose to one bidder what</p> <p>11 others were doing because you wanted to create a</p> <p>12 tension, I think was -- one time you used that phrase.</p> <p>13 Do you recall telling us about that a</p> <p>14 minute ago?</p> <p>15 A. Yes.</p> <p>16 Q. Tell me about that. What do you mean by that?</p> <p>17 A. The purpose of doing a sealed bid last and best</p> <p>18 like we did is you want to capture the possibility that</p> <p>19 one bidder wants something much more than another bidder</p> <p>20 does, and you realize more value than you would in a</p> <p>21 back and forth incremental increase.</p> <p>22 That's more complicated when there's</p> <p>23 different lots and different subsets of assets, and it's</p> <p>24 more complicated when there's different types of</p> <p>25 consideration. So the less each bidder knows about how</p>		<p>1 Q. I don't have a hard copy of this, I don't</p> <p>2 think. This is doc No. 839, authorizing the wind-down.</p> <p>3 Isn't this the motion you filed in August</p> <p>4 that started the process that culminated?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Let's see here if I can -- I didn't mark</p> <p>7 it.</p> <p>8 A. I think you passed what you were going for.</p> <p>9 Q. Do you see it?</p> <p>10 A. Uh-huh.</p> <p>11 Q. Tell me where I missed it.</p> <p>12 A. A little bit up.</p> <p>13 Q. Oh, you're right. There you go.</p> <p>14 So now I'm looking at page 3. I've got it</p> <p>15 in green here. I'm going to start right here. It says,</p> <p>16 "The IP assets to be auctioned do not include the</p> <p>17 individual or personal intellectual property of Alex</p> <p>18 Jones that may be owned by him or the estate. The sale</p> <p>19 of the IP assets would include a customary, qualifying</p> <p>20 and sealed bid, followed by an online open-cry auction</p> <p>21 of qualified bidders."</p> <p>22 Isn't that what you were telling the</p> <p>23 judge?</p> <p>24 A. That's what that sentence says.</p> <p>25 Q. I'm sorry. Maybe I misspoke.</p>	

15:38:15-15:39:25	Page 209	15:40:28-15:41:38	Page 211
<p>1 My question to you I had at the outset 2 was -- I said, You would agree with me that your 3 original filings in this case told the judge you wanted 4 to have a live open-cry auction, and you said no?</p> <p>5 A. That's right.</p> <p>6 Q. That's not what this is, open-cry auction of 7 qualified bidders?</p> <p>8 A. That's what those words say in one sentence of 9 the preliminary statement, that is not what the motion 10 says.</p> <p>11 Q. Oh, I see. "The sale of the IP assets would 12 include a customary qualifying and sealed bid round, 13 followed by an online open-cry auction of qualified 14 bidders" does not mean open-cry auction?</p> <p>15 A. I mean the rest of the motion talks about how 16 the follow-on open-cry auction is optional and that I 17 have discretion to change the procedures.</p> <p>18 Q. I'm not going to do it right this second. So 19 if I did a word search, I would find the word "optional" 20 in here?</p> <p>21 A. I don't know.</p> <p>22 Q. Okay. But how did you -- you will agree with 23 me that at least when you wrote this motion in August 24 that you were contemplating primarily an open-cry 25 auction structure?</p>		<p>1 When did you change from the auction to 2 the sealed best offer and why? When and why did you 3 make that change? That's where I was going.</p> <p>4 A. So leaving aside my disagreement with your 5 characterization, I decided not to do a live auction 6 sometime after receiving the initial bids and before 7 announcing that I wasn't going to do it. But the 8 decision was made then. It was after we got the initial 9 bids.</p> <p>10 Q. And why? Why did you make that decision?</p> <p>11 A. Because of the nature of the bids.</p> <p>12 Q. Explain that to us. I want to hear the 13 details. What do you mean?</p> <p>14 A. It was two different things. It was the two 15 bidders were bidding on slightly different assets and 16 valuing them differently, and one of the bidders was 17 proposing a form of compensation that was different from 18 the purchase cash price. That made apples-to-apples 19 bidding impractical.</p> <p>20 Q. Were there any other reasons besides those two 21 that you decided to go to the sealed best offer bid 22 versus the open-cry auction?</p> <p>23 A. I mean, the format was also recommended to do 24 that by the auctioneer. But my understanding of his 25 reasons were the same as the two I just gave.</p>	
15:39:26-15:40:26	Page 210	15:41:40-15:42:51	Page 212
<p>1 A. Oh, yes. That was in mind. That was something 2 we were contemplating.</p> <p>3 Q. And that was the structure you were going to 4 employ until you changed it?</p> <p>5 A. No. That was -- well, it was a possibility 6 that I declined to pursue but sure.</p> <p>7 Q. I'm not trying to be clever about this. I 8 thought you had said and I thought this document 9 confirmed it that you intended it to be an open-cry 10 auction, and you claim you had the right to change it 11 and you did. Not that it stayed mushy throughout. You 12 intended it to be an open-cry auction and then you 13 ultimately decided to go a different way.</p> <p>14 I thought that's what you were trying to 15 say.</p> <p>16 A. Well, what I'm trying to say is yes, we 17 anticipated it might be an open-cry auction. And 18 depending on how things had gone, that might have been 19 the best way to do it.</p> <p>20 I don't think I guaranteed or promised 21 that that's what was going to happen.</p> <p>22 Q. I'm not asking -- I'm not supplying those 23 words. You're putting those words into my question that 24 I didn't put in there because I'm trying to come to the 25 point, and I'll just come right to it.</p>		<p>1 Q. So, again, is there any other reasons you can 2 give us for why you decided to go to the sealed bid 3 versus the open-cry auction other than those two 4 reasons?</p> <p>5 A. Not thinking of any.</p> <p>6 Q. Huh?</p> <p>7 A. I'm not remembering any, no.</p> <p>8 Q. And I think your testimony was the first time 9 that you even heard -- suspected, dreamed, whatever -- 10 that there was going to be some sort of a waiver by the 11 Connecticut plaintiffs was when you received their 12 initial bid?</p> <p>13 A. No. I mean, I imagined they might possibly do 14 something in that vein. But no, before I saw this 15 distributable proceeds waiver in this mechanism was the 16 first time was when they submitted their bid.</p> <p>17 Q. Explain that to me. What did you think that 18 they might do?</p> <p>19 A. I don't know.</p> <p>20 Q. You just said -- you just said, "I imagined 21 they might possibly do something in that vein."</p> <p>22 What did you mean by that? What did you 23 imagine they might do?</p> <p>24 A. I didn't know a specific thing that they would 25 do. I said I thought they might try to use their claim</p>	

15:42:54-15:43:49	Page 213	15:45:07-15:46:00	Page 215
<p>1 in some way to make a bid, and I didn't know what that was going to look like until I saw this.</p> <p>3 Q. How would they use the claim to make a bid?</p> <p>4 A. I just said I don't know.</p> <p>5 Q. I'm just reading your words.</p> <p>6 "I imagined they might try to do something in that vein."</p> <p>8 Give me the possibilities of what you thought they might do. I'm just trying to understand the universe of possibilities.</p> <p>11 A. I didn't have specific ideas in mind for what they might do.</p> <p>13 Q. You can't give me anything specific?</p> <p>14 A. Well, you asked me what I thought and no.</p> <p>15 Q. And you never had any conversations with them at all before the initial bid about what they were thinking, directly or indirectly?</p> <p>18 A. Oh, I had many conversations with them about what they were thinking. About a bid?</p> <p>20 Q. Yeah.</p> <p>21 A. No.</p> <p>22 Q. And after the bid came in -- and when I say you, I mean you or your representatives, too. I'm not just talking about you, Chris Murray -- did you have conversations, you or your representatives, with these</p>		<p>1 I want to know what you believe.</p> <p>2 Do you believe that Tanenbaum or any of your representatives had conversations with the joint bidders about this waiver structure that they were proposing?</p> <p>6 A. About this waiver structure, no, I don't know.</p> <p>7 Q. You don't have any clue one way or the other?</p> <p>8 A. I do have a clue but you said you only want to know what I know for sure; so I'm telling you I don't know.</p> <p>11 Q. Well, let me rephrase.</p> <p>12 What is your reason to believe that Tanenbaum or any of your other representatives spoke to these people about this waiver?</p> <p>15 A. Because when we were deciding how to proceed with the auction, we had problems with -- not problems with, but it's difficult -- and I think these hours of back and forth are showing this -- it's difficult to analyze their waiver and exactly what it's worth. It's hard to pin it down.</p> <p>21 So we talked about how are we going to get them in the next round --</p> <p>23 Q. We?</p> <p>24 A. My team.</p> <p>25 Q. Okay.</p>	
15:43:52-15:45:04	Page 214	15:46:00-15:46:57	Page 216
<p>1 Connecticut plaintiffs or Tetrahedron after their initial bid came in about the structure of this waiver?</p> <p>3 A. I don't know everything that all my representatives said. I did not have any discussion with them about this.</p> <p>6 Q. Do you have any reason to believe your representatives, any of them -- lawyers, auctioneers, anybody -- had conversations with the Connecticut plaintiffs or Tetrahedron about this waiver concept or their bid?</p> <p>11 A. So I imagine Jeff Tanenbaum had discussions. I think he had discussions with both bidders about the next round of bidding, answering questions about it. So I know we had encouraged.</p> <p>15 I don't know if he also said this; but we encouraged in the procedures that, If you've got a formula or contingency, please make it more specific so I can evaluate it. That might have also been conveyed by him, but you can ask him about that.</p> <p>20 And First United American has asked several times, Are we going to get another chance to bid? Are we going to get another chance? No. No, you're not. It's last and best.</p> <p>24 Q. I'm trying to ask a much more specific question. And you said, I imagine Tanenbaum did this.</p>		<p>1 A. How are we going to get them, the joint bidders, to give us something that's easier to analyze and better for creditors.</p> <p>4 So then part of that was the last and best. Part of it was the bid procedures that said, Please be specific in dollar amounts. We really wanted to encourage that. We didn't get it. Didn't get all that we wanted but that's what we were encouraging.</p> <p>9 And I also know, because you're asking me what do I know, that Jeff Tanenbaum had discussions with both bidders in between the rounds about how to submit their bids and what was going to happen. And I don't know what those discussions were. So that's --</p> <p>14 Q. But you do know he had them?</p> <p>15 A. Yes.</p> <p>16 Q. Because he reported back to you he had them?</p> <p>17 A. Yeah.</p> <p>18 Q. What did he tell you?</p> <p>19 A. That he had those discussions. But I don't know what was in them. I don't remember anything even more specific than that.</p> <p>22 Q. But he told you that he'd had discussions with the joint bidders about their waiver structure and how they --</p> <p>25 A. Not about the waiver structure, about the bids.</p>	

15:46:59-15:47:50	Page 217	15:49:40-15:50:57	Page 219
<p>1 Q. Let me -- again, waiver structure.</p> <p>2 Conversations that anybody on your team had about the</p> <p>3 waiver.</p> <p>4 A. Oh, I have no idea. I don't know.</p> <p>5 Q. Nothing comes to your mind one --</p> <p>6 A. Specific to the waiver --</p> <p>7 THE REPORTER: Let him -- please, the</p> <p>8 question first.</p> <p>9 BY MR. BROOCKS:</p> <p>10 Q. Nothing comes to your mind about anything that</p> <p>11 your team would have reported back to you about</p> <p>12 conversations they had with any of the joint bidders</p> <p>13 about their waiver structure?</p> <p>14 A. I'm not aware of any discussions with the joint</p> <p>bidders about the waiver structure.</p> <p>16 Q. Now, if the Court comes back and decides that</p> <p>17 the bid of the joint bidders is noncompliant with these</p> <p>18 instructions, would you agree with me that First United</p> <p>19 is the winning bid? You're not going to have another</p> <p>20 contest are you, in other words?</p> <p>21 MR. WOLFSHOHL: Objection, form.</p> <p>22 BY MR. BROOCKS:</p> <p>23 Q. Go ahead.</p> <p>24 A. I don't know.</p> <p>25 Q. What's your opinion?</p>	<p>1 they could hear it from me and ask me questions before</p> <p>2 they saw it on the news or heard it from somebody else.</p> <p>3 I wanted to talk to the employees in</p> <p>4 particular to reassure them that this didn't mean they</p> <p>5 were all immediately fired, that I was going to continue</p> <p>6 to pay them, there was going to be a transition period</p> <p>7 and that I was going to pay them through the end of the</p> <p>8 year.</p> <p>9 And I wanted them to have that assurance</p> <p>10 because I'd been in the unfortunate position of shutting</p> <p>11 down companies on short notice many times, and I feel</p> <p>12 like I owe it to employees, if I can, to give them some</p> <p>13 lead time, some assurance, do what I can to help them</p> <p>14 out because they're not -- it's not their fault what's</p> <p>15 going on.</p> <p>16 I also wanted to talk to Alex Jones</p> <p>17 because his representatives had told me and I had heard</p> <p>18 him say on his show that, If we lose the auction, I've</p> <p>19 got another studio ready to go. I fully expected him to</p> <p>20 say, All right, I'm going to go. I'm going to take my</p> <p>21 guys and go to the other studio.</p> <p>22 I thought that's what was going to happen.</p> <p>23 So what I wanted to do was negotiate in person with him</p> <p>24 how to make that transition happen, say, When do you</p> <p>25 want to leave? How do you want to do this? What are</p>		
15:47:54-15:49:34	Page 218	15:51:00-15:52:03	Page 220
<p>1 A. It would depend on what the Court rules and why</p> <p>and what guidance or orders we get.</p> <p>3 Q. So you don't have an opinion as you sit here</p> <p>4 right now that if the joint bidders' bid is not accepted</p> <p>5 by the Court -- you don't have an opinion as to whether</p> <p>6 you would go with a backup bid versus start over?</p> <p>7 A. I think it's definitely possible that if for</p> <p>whatever reason I can't close with the joint bidder,</p> <p>that I would close with a backup bidder. That's what</p> <p>10 the process is supposed to be.</p> <p>11 Q. Okay. Isn't that what the process is supposed</p> <p>12 to entail?</p> <p>13 A. Yeah. The process anticipates a backup bidder.</p> <p>14 If I didn't think I would ever close with a backup</p> <p>bidder, I wouldn't designate them as a backup bidder.</p> <p>16 Q. Now, you got in your car and drove from Houston</p> <p>17 to Austin on the day that -- on, I guess, that Friday</p> <p>18 after you submitted the notice of the bid, notice of</p> <p>19 acceptance of the joint bidders' bid?</p> <p>20 A. I don't know which day of the week it was. I</p> <p>think it was the 14th, a Thursday or Friday.</p> <p>22 Q. Why did you come up there to Austin?</p> <p>23 A. I went to Austin because I wanted to meet with</p> <p>Alex Jones and I wanted to meet with the FSS staff to</p> <p>25 tell them who I selected as the winning bidder so that</p>	<p>1 you taking? Because it's -- I wanted that to be as</p> <p>smooth as possible and not as disruptive to employees</p> <p>and everybody else. That's why I went to Austin.</p> <p>4 Q. What representatives are you talking about?</p> <p>5 A. Bob Schleizer and Vickie Driver.</p> <p>6 Q. What did they tell you exactly?</p> <p>7 A. At what point?</p> <p>8 Q. You just said his representative told you about</p> <p>9 Alex Jones going to be able to --</p> <p>10 A. Oh, oh, oh ...</p> <p>11 Q. What did they tell you?</p> <p>12 A. No, that was earlier. I had asked -- I said --</p> <p>13 I don't remember exactly when, but I had said in a</p> <p>14 meeting with Bob -- I said, Does Alex Jones know that he</p> <p>15 might lose this auction and, if so, is there any -- what</p> <p>16 is he going to do?</p> <p>17 And I think I also asked if he knew if</p> <p>18 there was any -- I'm trying to remember exactly what I</p> <p>19 said. I said, But does he have an alternative plan, is</p> <p>20 what I was essentially asking.</p> <p>21 And he said, Yes, he knows he might lose</p> <p>22 and he has a backup plan.</p> <p>23 Q. Did you fire any employees that day?</p> <p>24 A. No.</p> <p>25 Q. Why would someone think that you did? Can you</p>		

15:52:06-15:53:09	Page 221	15:54:09-15:55:17	Page 223
1 help me figure out why? 2 What might have been said or done in your 3 conduct that might have been perceived as a termination 4 notice to employees? 5 A. I don't know. And that's a question I'm going 6 to have for you one day. I do not know why anybody 7 would think I did that or why they would tell a court 8 that I did that. 9 Q. Did you pull the plug on any of Alex Jones' 10 broadcasts that day? 11 A. No. What I did was I temporarily disconnected 12 the feed from two of the websites. But the broadcast 13 never stopped. 14 Q. Why did you temporarily disconnect the feed? 15 A. I disconnected the feed because it was one of 16 several things we were doing that morning to put a pause 17 in place so that we could start some sort of transition 18 or some orderly process in light of who the winning 19 bidder was. 20 Q. So what specifically did you do on this feed 21 thing? 22 A. The feed thing? 23 Q. You say you disconnected, "I disconnected the 24 feed because it was one of the several things we were 25 doing that morning to put a pause in place."	1 A. Well, a lot of reasons for that. There's 2 inventory control, there's issues with the credit card 3 processor. And I -- you have people buying products on 4 a website, and if they find out that somebody they don't 5 like has now bought their website, I didn't want a wave 6 of canceled orders coming in, which would have cost us 7 way more than the profit on those products. 8 Q. So you just stopped taking orders? 9 A. Yeah. I paused taking orders. 10 Q. You say paused. That verb you use, "paused," 11 you said that a couple of times. 12 What's the difference between stopping and 13 pausing? 14 A. Well, stopping implies for all time, I think, 15 and pausing implies that I intend to resume. And that's 16 what I did. 17 Q. So when you disconnected the feed for Alex 18 Jones' shows, you intended to resume it? 19 A. Absolutely. 20 Q. With Alex? 21 A. So two possibilities here. I fully expected 22 him to continue doing his show on some other platform 23 because that's what I had been led to believe he was 24 planning on doing. I have no intention of stopping him 25 speaking or doing a show, whatever. That's not what I	15:53:12-15:54:07	Page 222
1 A. Yes. 2 Q. What did you do to physically disconnect the 3 feed? 4 A. Oh, I didn't physically do anything. I, in the 5 room with Bob, asked one of the employees to disconnect 6 the feed from those two websites. 7 Q. And the feed showing what? 8 A. There's just a constant broadcast feed on 9 Infowars. 10 Q. Showing programming? 11 A. Yes. 12 Q. Why did you want to disconnect the feed right 13 then? 14 A. Because I didn't want any -- I wanted to take a 15 break from broadcasting so that I could talk with Alex 16 Jones and work out some sort of transition and discuss 17 what we were going to do next. 18 Q. So did you disconnect the feed before or after 19 you talked to Alex Jones? 20 A. I never talked to Alex Jones. He refused to 21 talk to me. 22 Q. So you just disconnected the feed? 23 A. I did that. I also took the Infowars stores. 24 I stopped doing new orders temporarily. 25 Q. Why?	15:55:21-15:56:42	1 care about. 2 So I thought his show was going to 3 continue or resume somewhere else. I also thought it 4 was possible it would continue or resume on that very 5 platform because I had not closed with the joint 6 bidders. The joint bidders had said -- they had 7 indicated that they intended to buy the assets and 8 create some sort of site or something making fun of Alex 9 Jones or making light of him using the Infowars 10 platform. 11 And in that scenario the broadcast, 12 whatever, would resume under that management and with 13 that goal. 14 Q. Just under a ridiculing, harassing kind of a -- 15 basically harassment of Alex Jones? 16 A. I don't know exactly what they wanted to do, 17 but I knew they wanted to use the assets. So whatever 18 it is, it was going to resume or they couldn't close or 19 something went wrong or the judge rejects the bid, as 20 you're hoping, and then I'll close with First United 21 American and they will want to resume with Alex Jones 22 doing exactly the same show that's on there now. 23 So I did mean pause. It was a pause to 24 try to figure out the next steps, but it was going to 25 resume one way or the other.	Page 224

15:56:43-15:57:50	Page 225	15:58:55-15:59:56	Page 227
<p>1 Q. Did you actually resume programming for Alex?</p> <p>2 A. Well, the programming never stopped, but I did reconnect the two websites.</p> <p>4 Q. When did you do that?</p> <p>5 A. The next morning, I think.</p> <p>6 Q. Why?</p> <p>7 A. Because it was now -- based on the hearing with the Court, there was some concern about the auction; and we would need to have a hearing on it. I felt like that was probably going to take a little bit more time. And I wanted to restore the status quo with respect to operations because the company is profitable.</p> <p>13 Q. Not as profitable as it was before you cut them off, right?</p> <p>15 A. Sales are lower.</p> <p>16 Q. Paused. I guess I should use your word.</p> <p>17 They're not as profitable as they were before you paused their sales, were they?</p> <p>19 A. Yeah, yeah. They're not.</p> <p>20 Q. If the Connecticut bidders -- back to this waiver thing -- if that structure goes through, how much credit does Alex Jones get for these judgments that are against him if your deal goes through with the joint bidders?</p> <p>25 A. I don't know.</p>		<p>1 A. Okay.</p> <p>2 Q. Okay. Does Alex Jones get any kind of credit on his judgments for that sale?</p> <p>4 A. I don't know.</p> <p>5 Q. What do you think?</p> <p>6 A. I think he would get some sort of credit because you can't get double satisfaction on a claim. And I think you said they were jointly and severally liable.</p> <p>10 Q. So if your \$7 million deal goes through, just like you fantasized or dreamed of it or whatever -- let me rephrase. I don't want to be derogatory here. Your \$7 million deal goes through as you planned and hoped in the joint bid, what is your best estimate as to how much credit Alex Jones would get on the judgments against him?</p> <p>17 A. I do not know how to estimate that. I don't know what that is.</p> <p>19 Q. Well, you've talked about the Connecticut plaintiffs giving up a portion of their judgment and giving it to Texas.</p> <p>22 Does it go to the Texas guys or does Connecticut get debited because of what they would have gotten but they gifted it over? Give me your best judgment on that.</p>	
15:57:51-15:58:52	Page 226	15:59:57-16:01:07	Page 228
<p>1 Q. What do you think?</p> <p>2 A. I don't know.</p> <p>3 Q. Well, take a guess. You're the trustee. Give me your best judgment.</p> <p>5 Doesn't he get the benefit of the sale proceeds applied against his judgment?</p> <p>7 A. I guess I don't know what you're asking because I don't think he's a creditor in the case.</p> <p>9 Q. Let me rephrase. You're auctioning off assets, right?</p> <p>11 A. Yes.</p> <p>12 Q. And the proceeds will be used to pay creditors?</p> <p>13 A. Yes.</p> <p>14 Q. How much credit will Alex Jones get on the Connecticut judgment if your deal goes through with them?</p> <p>17 A. Well, where I'm confused, the Connecticut creditors will get paid from these auction proceeds based on their claims against FSS.</p> <p>20 Q. Okay.</p> <p>21 A. So I'm not understanding your question about whether Jones would get credit.</p> <p>23 Q. Let me rephrase.</p> <p>24 Your \$7 million deal goes through to the joint bidders, right? Assuming hypothetically.</p>		<p>1 A. Oh, I see what you're asking.</p> <p>2 Q. What did you think I was asking?</p> <p>3 A. I wasn't sure.</p> <p>4 Q. You can feel free to ask me to clarify. But you see what I'm asking now, right?</p> <p>6 A. No. What are you asking?</p> <p>7 Q. Okay. Let me try it again.</p> <p>8 There is an auction that's going to take place or has taken place. If it goes through, the \$7 million as you have intended it to do, won't Alex Jones get some benefit or credit on the judgments that are outstanding against him from this auction proceeds?</p> <p>13 A. I would imagine he would get some sort of credit, but I don't know what it is or how much.</p> <p>15 Q. Who would decide?</p> <p>16 A. I don't know that either.</p> <p>17 Q. Would you assume that if the Connecticut plaintiffs forwent some gifted portion, would Alex nevertheless get the benefit of a deduction for what they forwent; or would it only be what the Connecticut plaintiffs actually got?</p> <p>22 A. Yeah. So the way I would think of it is -- because this is some hypothetical other proceeding --</p> <p>24 Q. Sure.</p> <p>25 A. -- if somebody got value on account of a claim</p>	

16:01:10-16:02:14	Page 229	16:03:33-16:17:12	Page 231
<p>1 and somebody was entitled to credit for it, yeah, they'd 2 probably get that credit because they decided to gift 3 that credit to somebody else, I wouldn't think would 4 change that credit. But that's just me speculating 5 on -- I mean, I don't really know.</p> <p>6 Q. Now, you told the bidders -- and turns out 7 there were two, that they could not use ranges; they had 8 to use actual dollar amounts, right? They could not use 9 ranges. They had to use cash, right?</p> <p>10 A. I think I said U.S. dollars, not a range, yeah.</p> <p>11 Q. Were you trying to make the cash bidders 12 believe that they should not submit a bid with any kind 13 of formulas or contingencies at all? Was that your 14 goal?</p> <p>15 A. I was trying to discourage that, yes.</p> <p>16 Q. Not forbid it, but discourage it?</p> <p>17 A. Well, I'm going to consider value, even if it's 18 not exactly the way I want it. But obviously it's 19 easier to compare U.S. dollars in fixed amounts. That's 20 easy.</p> <p>21 Q. So what you were really trying to say was, 22 We'll consider it if you do contingencies and ranges and 23 all that. We really don't like it, but we will consider 24 it. Nothing -- you weren't intending to communicate an 25 ironclad "thou shalt not" kind of thing?</p>		<p>1 I don't know what exhibit number that was.</p> <p>2 MR. BROOCKS: Do you remember? 915-1, the 3 first half? Let's take a quick, two minutes off the 4 record.</p> <p>5 THE VIDEOGRAPHER: The time is 4:03. We 6 are off the record.</p> <p>7 (Recess taken)</p> <p>8 THE VIDEOGRAPHER: The time is 4:15, and 9 we are back on the record.</p> <p>10 BY MR. BROOCKS:</p> <p>11 Q. Now, in terms of you going to Austin and 12 meeting with the employees and all that, were you 13 worried that they were going to steal stuff?</p> <p>14 A. Not specifically. As in steal computers and 15 leave with them? No.</p> <p>16 Q. What were you worried they were going to do?</p> <p>17 A. I was worried they might try to delete 18 historical content or otherwise make it difficult to 19 take control of the intellectual property assets.</p> <p>20 Q. So what did you do to ensure that didn't 21 happen?</p> <p>22 A. Well, one of the things was I engaged an IT 23 expert who began the process of imaging hard drives and 24 things like that.</p> <p>25 Q. And who was the IT expert?</p>	
16:02:19-16:03:21	Page 230	16:17:14-16:18:12	Page 232
<p>1 A. Well, no. We had the rules. We wanted fixed 2 amounts in dollars. But if somebody makes a 3 nonconforming bid, I'm going to consider it.</p> <p>4 Q. At what point do you disqualify them, say, You 5 made a nonconforming bid?</p> <p>6 A. It would depend.</p> <p>7 Q. On what?</p> <p>8 A. Well, it would depend on whether the creditors 9 would be better off accepting the nonconforming bid. We 10 got a nonconforming bid from First United American in 11 the first round, and it caused us to change exactly what 12 assets were being sold because it was better.</p> <p>13 Q. How was there a nonconforming bid?</p> <p>14 A. They added assets that were not in the original 15 asset group.</p> <p>16 Q. The consideration was not nonconforming; it's 17 just they were asking for things that weren't in the 18 group for sale. Is that what you're saying?</p> <p>19 A. Well, yeah. Then they allocated some 20 consideration to the nonconforming part, so I'm not sure 21 what you mean. But no, they bid a fixed dollar amount 22 but they included assets that were not part of the 23 initial form. And, of course, I considered that.</p> <p>24 Q. Now, look at the asset purchase agreement.</p> <p>25 That's, I believe -- I'm going to take it back to 915.</p>		<p>1 A. A guy named Pat Newton.</p> <p>2 Q. Who does he work with?</p> <p>3 A. I think it's called N&N Forensics or IT -- I 4 can't remember the name of his firm.</p> <p>5 Q. And when did you engage Pat to do that?</p> <p>6 A. A couple months ago.</p> <p>7 Q. Was it at the same time you're up there in 8 Austin?</p> <p>9 A. Oh, he had been engaged before then.</p> <p>10 Q. Had he begun mirroring hard drives?</p> <p>11 A. Yes. He had begun that process earlier.</p> <p>12 Q. Now, if attorney/client-privileged 13 communications are on those hard drives, you're not 14 intending to give those to the purchaser or The Onion, 15 are you, or the joint bidders?</p> <p>16 A. No.</p> <p>17 Q. How are we going to ensure that that doesn't 18 happen? Will you give us an opportunity -- strike that. 19 Let me start over.</p> <p>20 You haven't given images of any of the 21 computer systems to any of the joint bidders, have you?</p> <p>22 A. No.</p> <p>23 Q. Have you given them to anybody?</p> <p>24 A. No.</p> <p>25 Q. Would you allow Alex Jones and his team to</p>	

16:18:14-16:19:22	Page 233	16:20:40-16:21:36	Page 235
<p>1 peruse those hard drives to make sure there's nothing of 2 a confidential or sensitive nature on there before they 3 go out?</p> <p>4 A. Yeah. I'm sure we could work something out on that.</p> <p>6 Q. Okay. But, again, when we had the emergency 7 hearing that precipitated Mr. Wolfshohl's filing of the 8 emergency motion, I thought he had told the judge that 9 y'all were concerned the employees were going to be 10 walking out with things when they found out who bought 11 it. Did I misunderstand?</p> <p>12 A. I'm not sure exactly what he was referring to. 13 I mean, there was concerns about the security of the 14 assets; but I didn't have the image of somebody, you 15 know, taking a TV off the wall and leaving with it.</p> <p>16 Q. But you were concerned about deletions of 17 information from the systems?</p> <p>18 A. Yes. I was concerned about that.</p> <p>19 Q. And your protection of that -- against that is 20 to have the hard drives imaged?</p> <p>21 A. That's part of it, yes.</p> <p>22 Q. I guess what I'm trying to do is had that begun 23 at the time that you're up there in Austin?</p> <p>24 A. Yeah. That had begun before.</p> <p>25 Q. So, again, your testimony is that you did not</p>	<p>1 A. Yes.</p> <p>2 Q. Who?</p> <p>3 A. Counsel.</p> <p>4 Q. Who? Josh?</p> <p>5 A. I'm not sure specifically who.</p> <p>6 Q. Who do you think?</p> <p>7 A. Well, I don't know because you're asking about kind of a broad thing like who analyzed the things you're selling. Maybe we could talk about something specific.</p> <p>11 Q. Part of what you're selling is programming.</p> <p>12 You're selling past programs, aren't you?</p> <p>13 A. I'm selling the historical, yeah.</p> <p>14 Q. If that historical work product has been 15 generated by, you know, more than one copyright, you 16 know, people that contributed and collaborated on it, 17 don't they all have an interest in the copyright from 18 your understanding?</p> <p>19 A. Whatever rights they have they have.</p> <p>20 Q. So you're not trying to figure out who has what 21 co-rights, co-ownership rights in terms of getting that 22 sorted out before the sale occurs, are you?</p> <p>23 A. On the FSS assets, no.</p> <p>24 Q. Even though others probably do have 25 co-ownership rights, you agree?</p>		
16:19:25-16:20:37	Page 234	16:21:37-16:22:19	Page 236
<p>1 fire anybody?</p> <p>2 A. I didn't fire anybody, no.</p> <p>3 Q. Now, have you engaged in any -- I'm going to 4 strike that. Let me start over. I hate the term 5 "intellectual property." It is a meaningless term. It 6 is a meaningless term. It can be anything from a trade 7 secret to a trademark to a copyright to a service mark 8 to a trade -- it can just encompass the waterfront. Do 9 you agree with that?</p> <p>10 A. I don't agree it's a meaningless term. I agree it can be amorphous.</p> <p>12 Q. Let's use your term, an amorphous term. Do you 13 have any understanding about what joint rights a 14 generator of copyright material may have, for example, 15 of a broadcast? Do you have any understanding of that 16 at all?</p> <p>17 A. No, not much.</p> <p>18 Q. Well, what is your understanding?</p> <p>19 A. I think it's possible for two people to have rights in the same mark -- I mean, in the same copyrighted material or someone might have an implied license to use it; but I don't really understand the ins and outs of that.</p> <p>24 Q. Has anybody analyzed that from a standpoint of 25 what you're selling?</p>	<p>1 MR. WOLFSHOHL: Objection, form.</p> <p>2 A. I don't know about probably or not.</p> <p>3 BY MR. BROOCKS:</p> <p>4 Q. You don't know what the adverb is. I thought 5 you just agreed with me that you do have joint ownership 6 if you have collaborated in the creation of a copyright 7 of a work.</p> <p>8 MR. WOLFSHOHL: Objection, form.</p> <p>9 BY MR. BROOCKS:</p> <p>10 Q. Right? That's your understanding?</p> <p>11 A. I don't think I said that. I think I said --</p> <p>12 Q. Let's start over. Let's start over.</p> <p>13 Okay. Do you agree with me that if more 14 than one person collaborates to create a copyrightable 15 work, there can be joint ownership of that copyrightable 16 work?</p> <p>17 A. I don't know the answer to that.</p> <p>18 Q. Don't have a clue one way or the other?</p> <p>19 A. I don't know.</p> <p>20 Q. If I'm correct that you can enjoin owners, 21 could that create a problem from a sales standpoint 22 here?</p> <p>23 MR. WOLFSHOHL: Objection, form.</p> <p>24 A. No.</p> <p>25 BY MR. BROOCKS:</p>		

16:22:19-16:23:13	Page 237	16:24:25-16:25:23	Page 239
<p>1 Q. Why?</p> <p>2 A. Because what I'm selling is whatever the estate owns, as is/where is.</p> <p>3 Q. You're representing title, aren't you?</p> <p>4 A. Yeah, to what I'm selling.</p> <p>5 Q. So how can you say you have title if you don't, if it's jointly owned with other people? How can you represent that?</p> <p>6 MR. WOLFSHOHL: Objection to form.</p> <p>7 A. I'm not sure I understand your question.</p> <p>8 BY MR. BROOCKS:</p> <p>9 Q. Okay. If two people jointly own a product, okay, then one person doesn't own it; two people do, right?</p> <p>10 A. As far as it goes, yeah, that sounds right.</p> <p>11 Q. And so you as the seller can't sell a piece of property or a product or a copyrighted work or a program that is jointly owned by you and someone else, can you?</p> <p>12 MR. WOLFSHOHL: Objection to form.</p> <p>13 A. I don't know the answer to that.</p> <p>14 BY MR. BROOCKS:</p> <p>15 Q. What do you think?</p> <p>16 A. I'm not going to guess.</p> <p>17 Q. How many programs are you selling?</p> <p>18 A. What do you mean "programs"?</p>		<p>1 have disputes about that, there's forms for addressing it.</p> <p>2 Q. But didn't you tell the judge you weren't going to be selling anything that belonged to Alex Jones?</p> <p>3 A. We're not selling any assets of the Alex Jones individual estate; and we're not selling his individual IP, as I understand it.</p> <p>4 Q. Wouldn't a joint copyright interest in a previous show constitute Alex Jones' IP?</p> <p>5 A. Yeah. I'm not understanding what you're asserting, and that's why I don't know how to answer the question.</p> <p>6 Q. Okay. Well, now, we talked about fiduciary.</p> <p>7 To whom do you believe you owe a fiduciary duty, sir?</p> <p>8 A. The estate and its creditors.</p> <p>9 Q. Which? Is it to both?</p> <p>10 A. Both.</p> <p>11 Q. Okay. Now, let's take creditors. Well, tell me. When you say to "the estate and its creditors," what do you mean? Can you be more specific?</p> <p>12 A. No. I mean the estate and its creditors.</p> <p>13 Q. Is that the creditors as a group versus one particular creditor?</p> <p>14 A. Yeah. It's the creditors as a group.</p> <p>15 Q. Okay. So whether they benefit the Connecticut</p>	
16:23:15-16:24:24	Page 238	16:25:26-16:26:27	Page 240
<p>1 Q. Well, you're selling a library of previous shows, aren't you?</p> <p>2 A. Yes.</p> <p>3 Q. Who has the copyright on those?</p> <p>4 A. I don't know. It would depend on the show.</p> <p>5 Q. Okay. Who do you think possibly does?</p> <p>6 A. I don't know.</p> <p>7 Q. But it's possible that Alex Jones, for example, may have copyrightable interests in some of these programs, right?</p> <p>8 A. I don't know what rights he has.</p> <p>9 Q. You haven't even looked?</p> <p>10 A. I don't know what rights he has.</p> <p>11 Q. Don't you think it ought to be sorted out what he does and doesn't own from a copyright standpoint on programming?</p> <p>12 A. I don't know how to answer that question.</p> <p>13 Q. Truthfully. Just give me your best judgment.</p> <p>14 Don't you think it ought to be sorted out who owns this thing? Is it jointly owned? Is it owned by Alex and more than one person? I mean, does FSS even have an interest at all?</p> <p>15 Don't you think those kinds of issues ought to be sorted out before a sale takes place?</p> <p>16 A. I'm selling what the estate owns. If people</p>		<p>1 plaintiffs or the Texas plaintiffs is not the issue; it's the creditors as a theoretical body?</p> <p>2 A. Right. I don't think I have a duty to any particular creditor except as in their capacity as a member of the creditor group.</p> <p>3 Q. Now, you had said earlier that you'd gotten some phone calls from Moshenberg -- I think I'm pronouncing the name correctly. I don't know. Moshenberg. Does that sound right?</p> <p>4 A. Moshenberg. And it's Cicack while we're at it.</p> <p>5 MR. CICACK: That's okay. I've been called a lot worse.</p> <p>6 MR. BROOCKS: Tell me I didn't mispronounce your name.</p> <p>7 MR. CICACK: Yeah. It's okay.</p> <p>8 BY MR. BROOCKS:</p> <p>9 Q. What's his name again, the gentleman I'm talking about?</p> <p>10 A. Moshenberg.</p> <p>11 Q. Mr. Moshenberg. You were talking about him calling you about a veto over sales.</p> <p>12 MS. DRENGA: Objection to form.</p> <p>13 BY MR. BROOCKS:</p> <p>14 Q. Do you remember that?</p> <p>15 A. Yeah. We had discussed, yeah, that -- yes,</p>	

16:26:31-16:27:20	Page 241	16:28:46-16:29:46	Page 243
<p>1 yes.</p> <p>2 Q. Okay. About when did that conversation happen 3 in relation to, you know, bids? Give me a time. Give 4 me an orientation here.</p> <p>5 A. Oh, before the bidding.</p> <p>6 Q. Before the initial bid came in?</p> <p>7 A. (Witness nods head affirmatively.)</p> <p>8 Q. Was it only one conversation?</p> <p>9 A. I don't remember.</p> <p>10 Q. Could have been more?</p> <p>11 A. I talk to him a lot on lots of cases. So I 12 don't know how many times this came up.</p> <p>13 Q. Well, you talk to him about lots of cases. You 14 mean other than this Alex Jones case?</p> <p>15 A. Yes.</p> <p>16 Q. So you have other cases he's involved in?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Well, I want to focus on this veto over 19 sales conversation. How many conversations would you 20 say you've had with anybody on the Connecticut or Texas 21 plaintiffs' side about them wanting a veto of sales?</p> <p>22 MS. DRENGA: Objection to form.</p> <p>23 A. So veto to sales?</p> <p>24 BY MR. BROOCKS:</p> <p>25 Q. Yeah, them wanting a veto right over your</p>	<p>1 dictate to you?</p> <p>2 MS. DRENGA: Objection, form.</p> <p>3 A. Well, I don't think they did have a good basis 4 for that.</p> <p>5 BY MR. BROOCKS:</p> <p>6 Q. Did they articulate one, though?</p> <p>7 A. At different times there were versions of, 8 Well, if we hold all the claims, why can't we decide 9 what happens?</p> <p>10 And my response was, You actually don't 11 hold all the claims and also I'm refusing to exclude 12 anyone from the auction.</p> <p>13 Q. Did the fiduciary duty you owe to creditors 14 enter into your thinking when you're having these 15 conversations?</p> <p>16 A. Yes.</p> <p>17 Q. Would you agree with me that it created some 18 sort of a tension in your thinking? I mean, Gosh, 19 creditors are asking to whom I owe duties or asking me 20 for this approval right. Did that create any kind of 21 tension or conflict in your thinking?</p> <p>22 A. Not a conflict. Maybe some tension just 23 because a large percentage of the creditors were asking 24 for something. But it's what I said earlier. I owe a 25 duty to creditors and the estate as a whole, not to what</p>		
16:27:23-16:28:43	Page 242	16:29:50-16:31:04	Page 244
<p>1 sales, who you sold --</p> <p>2 A. Oh, yeah. I thought he described it as -- or I 3 think of it as a veto over who the buyer could be.</p> <p>4 Q. Okay.</p> <p>5 A. Or excluding certain people from the auction.</p> <p>6 And that concept has been requested or come up probably 7 a dozen different times in different calls and meetings 8 and exchanges.</p> <p>9 Q. Give us a sense for -- I want to be as specific 10 as you can about what that demand was or request, 11 however you want to frame it.</p> <p>12 A. Yeah. I'm trying to be as specific as I can 13 because it came up in different ways, but the gist was a 14 request that we do a process so that certain parties 15 would not be able to acquire certain assets. That's 16 what I understand.</p> <p>17 Q. What parties? Did anybody get named?</p> <p>18 A. The families.</p> <p>19 Q. No, I'm sorry. That the families didn't want 20 purchasing the assets.</p> <p>21 A. Not excluding specific purchasers but just more 22 of a concept of they want to be able to approve of who 23 buys it. That was the request.</p> <p>24 Q. And what was the basis for, if one was 25 articulated, for why that would be something they could</p>	<p>1 any particular group would prefer.</p> <p>2 Q. Uh-huh. Okay. And did you have a common 3 retort that you would use?</p> <p>4 A. Yeah. I was consistent. I was not going to 5 exclude anyone from the auction. I wasn't going to give 6 anyone a veto.</p> <p>7 Q. Now, you say that you saw a partial agreement 8 or an agreement of some sort that people sent you 9 embodying this. Did I hear you correctly to say that?</p> <p>10 MS. DRENGA: Objection to form.</p> <p>11 A. Yeah. I've seen different versions of a term 12 sheet.</p> <p>13 BY MR. BROOCKS:</p> <p>14 Q. That says what?</p> <p>15 A. Primarily it sets out how the Connecticut and 16 Texas families would share in different types of 17 proceeds and then includes a provision that it's 18 contingent on the buyer being a buyer that is acceptable 19 to those groups.</p> <p>20 Q. Now, could we have a copy of that? Is it one 21 document or more than one?</p> <p>22 A. It's different versions of a term sheet. I 23 don't know how many versions there are.</p> <p>24 MR. BROOCKS: Josh, could we get that?</p> <p>25 MR. WOLFSHOHL: We don't have any issue</p>		

16:31:04-16:32:05	Page 245	16:33:35-16:35:28	Page 247
1 with giving it. I mean, we didn't create the document. 2 We've never done anything to it. We've just seen it. 3 MR. BROOCKS: Can we get a copy? 4 MR. WOLFSHOHL: I don't have a problem 5 with it. Understand it's not my document. If somebody 6 tries to file something to try to prevent that, I don't 7 know if they will, but it's -- you know, I have copies 8 of it. We never -- 9 MR. BROOCKS: Well, if we haven't seen 10 some filing by tomorrow morning, like I might want to 11 show it to the -- we've already talked about it. So I 12 can't imagine what the objection would be using the best 13 evidence of it. 14 BY MR. BROOCKS: 15 Q. What is your best recollection of the proviso 16 that contained the right of approval? 17 MS. DRENKA: Objection, form. 18 A. I mean, just what I've said. 19 BY MR. BROOCKS: 20 Q. Say it again. 21 A. That the deal proposed in the term sheet is 22 contingent upon the purchaser being acceptable to the 23 parties, the family parties. 24 Q. So is it a term sheet that would apply in this 25 context to the bid here?	1 Let me go to the section on consideration 2 of purchase price. I apologize. Let me just thumb to 3 it there. Look on page 7. Just start there under 4 section 1.3, which is consideration for the purchased 5 assets. 6 A. Okay. 7 Q. Read that to us. I'm tired of hearing myself 8 talk. 9 A. "The aggregate purchase price shall be 10 \$1,750,000 in cash plus the distributable proceeds 11 waiver (the purchase price)." 12 Q. Stop right there. That's what I want to focus 13 on. 14 So it's 1.75 million in cash plus the 15 distributable proceeds waiver? 16 A. Yes. 17 Q. Now, have you guys agreed -- strike that. 18 Is that supposed to be a dollar figure, 19 reducible to a dollar figure, this distributable 20 proceeds waiver? 21 A. Yes. At some time in the future the dollar 22 amount will be known. 23 Q. And you don't know what it is right now? 24 A. No. 25 Q. What do you think it is?		
16:32:08-16:33:33	Page 246	16:35:30-16:37:12	Page 248
1 A. Yes. It's talking about the sale of the FSS 2 assets is how I understood it. It's a term sheet to 3 resolve Connecticut/Texas disputes over who should get 4 which percentage of the proceeds, and part of that was 5 that deal wouldn't -- was contingent on the outcome of 6 this auction and sale process being to a buyer of their 7 liking. 8 MR. BROOCKS: Well, we would sure like to 9 see that. 10 BY MR. BROOCKS: 11 Q. Now, let me ask you to turn your attention back 12 to this alternative purchase agreement. You know what 13 I'm talking about? I don't have the precise exhibit 14 number here. 15 A. Yeah. 16 Q. It's attached as Exhibit 1 to your 915 filing. 17 And I'm going to ask you about -- go to the red page 22, 18 if you will. 19 A. Is it in your book? 20 Q. It should be in the 915 book, page 22. 21 A. 915 dash what, though? 22 Q. 1. 23 A. I've got it, yeah. 24 Q. Now, I'm sorry. Let me start at a more basic 25 spot. I'll come back to that in a second.	1 A. It's the estimates that I had in -- 2 Q. Give me a number. 3 A. Probably -- can I refer to -- 4 Q. You can refer to anything you want to refer to. 5 Just tell me what you think that number is. 6 A. I mean, it could be in a range, but I'm trying 7 to find the -- where is this? Somewhere around 200,000. 8 Q. \$200,000? 9 A. That's the distributable proceeds amount, the 10 waiver amount, yeah. 11 Q. Where did you get that from? 12 A. Well, that's what I had on this spreadsheet we 13 were discussing earlier. 14 Q. Show me which one, which exhibit number is 15 that? 16 A. This one's not marked. Is it 14? I think it's 17 16. Do you have a copy of it? 18 Q. I don't know that I've got -- 19 A. Here. You can take mine. I've got two of 20 them. 21 Q. And you're referring to this? 22 A. I referred to the wrong cell. 23 Q. What's the Bates number on the document you're 24 referring to? 25 A. TRANZON893.		

16:37:22-16:40:18	Page 249	16:42:36-16:44:13	Page 251
<p>1 Q. It's the last page of my book here from the 2 Tranzon production. Okay. That is going to be what you 3 were talking with Mr. Walter about as Exhibit 16. 4 And so what you believe to be the 5 distributable proceeds waiver number, tell me where that 6 number is on this document.</p> <p>7 A. So bottom right.</p> <p>8 Q. Let me just pull this up real quick.</p> <p>9 THE REPORTER: Can we go off the record 10 for a moment, please.</p> <p>11 THE VIDEOGRAPHER: Going off the record at 12 4:37 p.m. (Recess taken)</p> <p>14 THE VIDEOGRAPHER: The time is 4:39 p.m. 15 We are back on the record.</p> <p>16 BY MR. BROOCKS:</p> <p>17 Q. Now we're looking at Exhibit 16, which is 18 TRANZON893. And tell us where you think the 19 distributable proceeds waiver that the APA 20 contemplates -- tell us where it is and where to find it 21 on this.</p> <p>22 A. So there's two examples of it on this exhibit because it ultimately is going to depend on the percentage of the claims pool that Connecticut is and the administrative claims amount.</p>		<p>1 a circle, or indicate, is based on a winning bid of 2 4 million 300-something thousand dollars, isn't it?</p> <p>3 A. Right. Using that cash equivalency analysis we did before, yeah.</p> <p>5 Q. So that would be right here. That's the 6 4 million I'm talking about. You'd agree with me on 7 that?</p> <p>8 A. Right. If that were the cash amount, it tells you how much the gift class would have gotten with those 10 assumptions, 900; and then the 650 is what Connecticut 11 would have to kick in so that the gift class would be as 12 good off under the winning bid as they would have been 13 under that 4.35. And in that case it's 650.</p> <p>14 Q. Well, let me ask you this. If your contract 15 says -- but you're sure that -- well, before I get to 16 that, give me the -- you say you're going to give me 17 another possibility?</p> <p>18 A. Uh-huh.</p> <p>19 Q. What's the other possibility?</p> <p>20 A. The same line on the chart below, the 173.</p> <p>21 Q. Uh-huh. Let me mark that.</p> <p>22 A. And the difference there is just the assumptions.</p> <p>24 Q. Okay. So 173 will go right there. Let me 25 close that out.</p>	
16:40:19-16:42:31	Page 250	16:44:13-16:45:27	Page 252
<p>1 But in the top of the chart in that example, the most that it could be would be -- it would be 650.</p> <p>4 Q. Now, when you say the top of the chart, is what 5 you're referring to -- I'm going to do this real 6 quick -- is it this top portion here?</p> <p>7 A. Yeah.</p> <p>8 Q. So what I've got in blue?</p> <p>9 A. Right. Then if you look at the bottom right-hand corner -- well, there's the line. Distributable proceeds waiver there is 650.</p> <p>12 Q. Okay. So I'm going to do that real quick. Let 13 me just circle that.</p> <p>14 So you're saying that in -- I did a 15 rectangle.</p> <p>16 So what you're talking about then would 17 be -- work with me baby -- that 650 right there on that 18 line?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And that's determined by -- that's based 21 on a winning bid of \$4,350,000?</p> <p>22 A. No. That's based on -- wait. Let me let you ask your question so I know what I'm answering.</p> <p>24 Q. Well, that \$650,000 that you're directing our 25 attention to that I've spent great pains to try to draw</p>		<p>1 So have I marked those correctly? So the 2 possibilities are either -- let me break this down -- 3 650 or 173?</p> <p>4 A. Yeah. Those are two possibilities.</p> <p>5 Q. Well, how many of them are there?</p> <p>6 A. Oh, as many as -- it depends on what the 7 ultimate percentage is and what the administrative --</p> <p>8 Q. What do you mean, the ultimate percentage?</p> <p>9 A. The percentage of the claims pool that 10 Connecticut represents because that will determine how 11 much they can contribute.</p> <p>12 Q. What are the ranges of possible claims pools 13 we're talking about?</p> <p>14 A. Reasonably probably between 80 and 95.</p> <p>15 Q. Not 75?</p> <p>16 A. 75 would be, I think, an unlikely outcome.</p> <p>17 Q. Well, I'm just trying to get something that the 18 Court and all of us can understand.</p> <p>19 When you say in your APA that the 20 aggregate purchase price shall be this plus the 21 distributable waiver, you're referring to somewhere 22 between 650 and \$173,000. Is that right?</p> <p>23 A. And possibly lower and possibly higher. I'm 24 using these as examples of what it would be under 25 different assumptions.</p>	

16:45:28-16:46:32	Page 253	16:47:52-16:49:11	Page 255
<p>1 Q. What could it be as high as and as low as?</p> <p>2 A. Oh, I don't know.</p> <p>3 Q. Well, who can figure that out?</p> <p>4 A. Well, we won't have to. One day the claims pool will be set and we will know that number, and the administrative claims amount will be known and we will know that number. And then it's very straightforward math.</p> <p>5 Q. So when you sign a contract, though, and you want the judge to approve you to sign this contract we see as part of your motion -- it's Exhibit 915-1, right -- you want him to authorize you to sign that tomorrow, don't you, or Monday?</p> <p>14 A. Yeah. I want him to approve the APA.</p> <p>15 Q. If he approves it, you would sign it, wouldn't you?</p> <p>17 A. If we close, yeah.</p> <p>18 Q. Well, I'm not trying to be clever here; I'm just trying to understand.</p> <p>20 If the judge on Monday says, Mr. Murray, you've done it right; I approve the sale, when would you sign this agreement?</p> <p>23 A. At closing, whenever that is.</p> <p>24 Q. When would that be?</p> <p>25 A. I don't know. Probably pretty soon.</p>		<p>1 A. That's right.</p> <p>2 Q. And "in the sale order" means the order the bankruptcy court approves in the agreement?</p> <p>4 A. That's right.</p> <p>5 Q. Okay. Then you go to the section itself, and it says "promptly but no later than five days." This is the sale order.</p> <p>8 But I don't see anywhere in section 5.2 where the judge is supposed to fill in a blank for what that distributable waiver amount is or how it's supposed to even be determined.</p> <p>12 A. Yeah. I don't think the judge does fill it in.</p> <p>13 My understanding is the reference to the sale order is to the order that we're seeking approval of now.</p> <p>15 Q. You've got the sale order defined in your contract, don't you? Right? You've got that defined right there. Am I wrong?</p> <p>18 A. Yeah. That's the order that we're trying to get entered.</p> <p>20 Q. And in that order that you want to have entered, you're going to include a mechanism by which the judge will set the amount?</p> <p>23 A. There will be a formula that explains how it's calculated, a description of it, yes.</p> <p>25 Q. A formula. And that formula will then become,</p>	
16:46:34-16:47:50	Page 254	16:49:14-16:51:11	Page 256
<p>1 Q. What's left to be done?</p> <p>2 A. I don't know. I'd have to look at all the conditions precedent and everything. There might be other documents that have to be signed at the same time. But I've received the money; and if the APA has approved, it won't be long.</p> <p>7 Q. So won't be long meaning a week at most. Would you agree with that?</p> <p>9 A. It could be less, could be more. I don't know.</p> <p>10 Q. Well, who will put the number in and how will that number be computed on this distributable waiver?</p> <p>12 When we get down to that one-week timeframe and now you're going to sign, who will fill in that number?</p> <p>15 A. It will not be a number at the time this is signed. It will be a reference to a definition, and it will be calculated when it can be calculated.</p> <p>18 Q. Okay. So if I go over here to Distributable Proceeds Waiver, that definition in your agreement says "means in accordance with the sale order" and on the terms set forth herein, "the commitment of the families to forego the distributable proceeds waiver amount." And then the "distributable proceeds waiver amount" means the amount set forth in the sale order?</p>		<p>1 in your mind -- so when it says that the -- back on page 3 when it says the consideration is the aggregate purchase price of 1.75 million cash plus the distributable proceeds waiver, that's going to be a formula; that ain't going to be a number, is it?</p> <p>6 A. Yeah. That portion of it will be something that will be calculated later based on a formula, yeah.</p> <p>8 Q. Okay. And you are coming on Monday, right?</p> <p>9 You'll be there?</p> <p>10 A. Yes.</p> <p>11 Q. Right?</p> <p>12 A. Yes.</p> <p>13 Q. Okay, good. I just want to make sure.</p> <p>14 No need for a subpoena or anything like that, right?</p> <p>16 A. No.</p> <p>17 Q. Okay.</p> <p>18 MR. BROOCKS: I think I'll pass the witness right now. I think somebody else wanted to ask you some questions.</p> <p>21 MR. WOLFSHOHL: Latham?</p> <p>22 MS. RECKLER: Can you hear me? This is, for the record, Caroline Reckler of Latham & Watkins.</p> <p>24</p> <p>25</p>	

16:51:13-16:52:22	Page 257	16:53:15-16:54:23	Page 259
<p>1 EXAMINATION</p> <p>2 QUESTIONS BY MS. RECKLER:</p> <p>3 Q. I will be extremely brief. I think we're going</p> <p>4 to touch on topics that we have not covered for the last</p> <p>5 eight hours.</p> <p>6 Just for the record again, my name is</p> <p>7 Caroline Reckler. I represent X Corp., which owns and</p> <p>8 operates the social media site X, formerly known as</p> <p>9 Twitter.</p> <p>10 Mr. Murray, I'm going to ask you some</p> <p>11 questions about the pending sale motion. As I</p> <p>12 mentioned, I will be brief. If you have any questions</p> <p>13 or you'd like me to repeat or clarify anything, please</p> <p>14 let me know; or if you can't hear me, I will speak up or</p> <p>15 repeat myself.</p> <p>16 Also just to confirm, were you able to</p> <p>17 print out -- I think we had six exhibits. Was somebody</p> <p>18 able to prepare those for you?</p> <p>19 A. I saw those. I don't have them in front of me.</p> <p>20 THE WITNESS: Josh, are those them?</p> <p>21 MR. WOLFSHOHL: Is it just six documents,</p> <p>22 Caroline?</p> <p>23 MS. RECKLER: It's six documents, some of</p> <p>24 which we've already talked about.</p> <p>25 A. All right. I've got them.</p>	<p>1 Q. And you recognize this motion?</p> <p>2 A. Yes.</p> <p>3 Q. And did you review the motion before it was</p> <p>4 filed?</p> <p>5 A. Yes.</p> <p>6 Q. And did you provide comments to counsel?</p> <p>7 A. Yes.</p> <p>8 Q. Were they incorporated?</p> <p>9 A. Yes.</p> <p>10 Q. And did you authorize the filing of the motion</p> <p>11 before counsel filed it?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. If you'd turn to the back of the motion,</p> <p>14 do you see a certificate of service?</p> <p>15 A. Yes.</p> <p>16 Q. Is X Corp. listed anywhere there?</p> <p>17 A. I'll page through it.</p> <p>18 Do you represent it's not?</p> <p>19 Q. I do represent it is not. It's also</p> <p>20 alphabetical.</p> <p>21 A. I see it there. I do not see X on here.</p> <p>22 Q. Okay. So, to your knowledge, this motion was</p> <p>23 not served on X Corp.?</p> <p>24 A. Not according to the certificate of service,</p> <p>25 right.</p>		
16:52:24-16:53:13	Page 258	16:54:24-16:55:48	Page 260
<p>1 BY MS. RECKLER:</p> <p>2 Q. Thank you.</p> <p>3 And just, again, for the record, you're</p> <p>4 the Chapter 7 trustee in this case?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And what does that job entail?</p> <p>7 A. I administer the estate and reduce its assets</p> <p>8 to money for the benefit of creditors.</p> <p>9 Q. Would you say that part of your job is to</p> <p>10 familiarize yourself with the assets of the estate?</p> <p>11 A. Yes.</p> <p>12 Q. And with its operations?</p> <p>13 A. Yes.</p> <p>14 Q. And its employees?</p> <p>15 A. Yes.</p> <p>16 (Plaintiffs' Exhibit 1 was marked for</p> <p>17 identification.)</p> <p>18 BY MS. RECKLER:</p> <p>19 Q. Okay. If you'd look at Exhibit 1, do you have</p> <p>20 that in front of you?</p> <p>21 A. Is this the wind-down order?</p> <p>22 Q. No. It should be docket No. 829, the Trustee's</p> <p>23 Motion for Entry of an Order Authorizing the Wind-Down</p> <p>24 of Free Speech Systems, LLC.</p> <p>25 A. Okay, yes. I have that.</p>	<p>1 Q. Okay. If you turn to page 3 of the motion,</p> <p>2 paragraph 5.</p> <p>3 A. Okay.</p> <p>4 Q. If you read -- and I'll give you the time to do</p> <p>5 so -- that paragraph, do you see that it refers to,</p> <p>6 quote, social media accounts, end quote?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And do you see that it mentions there in</p> <p>9 that context that those social media accounts were some</p> <p>10 of the assets that were going to be sold?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Can you describe the social media</p> <p>13 accounts that were contemplated.</p> <p>14 A. Yes. They're the social media accounts of FSS</p> <p>15 that included at least three on the X platform, I think</p> <p>16 Infowars, Banned.video. The War Room had one. And then</p> <p>17 some other social media accounts on other platforms.</p> <p>18 Q. And do you know what other platforms?</p> <p>19 A. No. It's written down somewhere, but most of</p> <p>20 them I'd never heard of.</p> <p>21 Q. Okay. Do you know just -- do you happen to</p> <p>22 know how many platforms?</p> <p>23 A. I think about a dozen.</p> <p>24 Q. Okay. Do you agree that the social media</p> <p>25 accounts referenced there does not specify that any of</p>		

16:55:51-16:57:01	Page 261	16:58:19-16:59:15	Page 263
<p>1 those were X accounts?</p> <p>2 A. In this paragraph, no. Yeah.</p> <p>3 Q. Was there any other reference in this motion</p> <p>4 specifically to X accounts?</p> <p>5 A. I don't know. I don't think so.</p> <p>6 Q. Okay. Can you turn to Exhibit 2.</p> <p>7 A. This is the wind-down order. Okay.</p> <p>8 Q. Yeah. So do you recognize this as the order</p> <p>9 granting the wind-down motion that was shown as</p> <p>10 Exhibit 1?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Okay. And this order, is it fair to say it</p> <p>13 authorized the sale of the social media assets that we</p> <p>14 just discussed in the motion?</p> <p>15 A. Yes.</p> <p>16 Q. And as part of that wind-down process, what</p> <p>17 assets did you seek to sell?</p> <p>18 A. The assets of FSS. So it would be all the</p> <p>19 intellectual property assets and the other assets of</p> <p>20 FSS.</p> <p>21 Q. And did you conduct diligence? Did you or your</p> <p>22 team conduct diligence on the assets that you proposed</p> <p>23 to sell before the motion was filed?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And you were trying to sell the social</p>		<p>1 these accounts?</p> <p>2 A. Yes. It's FSS employees.</p> <p>3 Q. And do you know how many followers there are on</p> <p>4 each account?</p> <p>5 A. No, I don't.</p> <p>6 Q. Okay. I know you've mentioned that these</p> <p>7 accounts are used, these X accounts are used constantly.</p> <p>8 Do you have any idea when they were last</p> <p>9 used?</p> <p>10 A. No, I don't.</p> <p>11 Q. Would it be fair to say today?</p> <p>12 A. That wouldn't surprise me.</p> <p>13 Q. In the last week?</p> <p>14 A. Probably, yes.</p> <p>15 (Plaintiffs' Exhibit 3 was marked for</p> <p>16 identification.)</p> <p>17 BY MS. RECKLER:</p> <p>18 Q. Okay. Can you turn to Exhibit 3.</p> <p>19 A. Okay.</p> <p>20 Q. Do you recognize this as the trustee's motion</p> <p>21 for authority to sell the intellectual property assets?</p> <p>22 A. Yes.</p> <p>23 Q. And did you review this motion before it was</p> <p>24 filed?</p> <p>25 A. Yes.</p>	
16:57:04-16:58:16	Page 262	16:59:16-17:00:08	Page 264
<p>1 media assets as part of that process?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Can you describe or detail what X</p> <p>4 accounts the estate uses.</p> <p>5 A. I think, primarily the Infowars and the</p> <p>6 Banned.video, those are the ones I'm familiar with.</p> <p>7 Q. But there could be more?</p> <p>8 A. There could be more, yes.</p> <p>9 Q. Okay. Who has access to these accounts?</p> <p>10 A. I believe Alex Jones does and other employees</p> <p>11 of FSS.</p> <p>12 Q. Okay. And do you know what user name is</p> <p>13 associated with the X accounts?</p> <p>14 A. I do not.</p> <p>15 Q. Do you know who controls the passwords?</p> <p>16 A. Yes. In the sense that it's FSS employees,</p> <p>17 it's a combination of two people whose last names I</p> <p>18 don't know.</p> <p>19 Q. Okay. But if you asked them for those</p> <p>20 passwords, would they provide them to you?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you know how regularly these accounts are</p> <p>23 used?</p> <p>24 A. I believe they're used constantly.</p> <p>25 Q. Okay. And do you know who puts content on</p>		<p>1 Q. And did you provide comments to counsel on the</p> <p>2 motion?</p> <p>3 A. I did.</p> <p>4 Q. And were they incorporated?</p> <p>5 A. Yes.</p> <p>6 Q. And did you authorize counsel to file the</p> <p>7 motion?</p> <p>8 A. Yes.</p> <p>9 Q. Can you turn to paragraph 5, please.</p> <p>10 A. Okay.</p> <p>11 Q. Do you see that it lists -- or refers to the X</p> <p>12 accounts?</p> <p>13 A. What page are you on?</p> <p>14 Q. Excuse me. I am on page 5, paragraph --</p> <p>15 A. I heard paragraph 5.</p> <p>16 Q. I'm sorry.</p> <p>17 A. I'm with you now.</p> <p>18 MR. BROOCKS: I'm sorry. Where are we?</p> <p>19 THE WITNESS: Page 5.</p> <p>20 A. You're talking about the social media accounts</p> <p>21 chart there in the middle?</p> <p>22 BY MS. RECKLER:</p> <p>23 Q. Yes.</p> <p>24 A. Yeah, I see that.</p> <p>25 Q. And you see that it refers to the X accounts?</p>	

17:00:12-17:02:06	Page 265	16:46:10-17:04:57	Page 267
<p>1 A. I see one X account on there, The Real Alex 2 Jones X account, I think. Yeah.</p> <p>3 Q. Yep. Okay. Can you turn to Exhibit A at the 4 end of this motion.</p> <p>5 A. Okay.</p> <p>6 Q. Do you see reference to the X terms of service 7 listed at the bottom of the chart?</p> <p>8 A. I see that, yes.</p> <p>9 (Plaintiffs' Exhibit 5 was marked for 10 identification.)</p> <p>11 BY MS. RECKLER:</p> <p>12 Q. Will you turn to Exhibit 5.</p> <p>13 A. Okay. I see that.</p> <p>14 Q. Are these the X terms of service that you 15 referred to in Exhibit A to the motion?</p> <p>16 A. I think so, yes.</p> <p>17 Q. Why did you specify or list an X account and 18 the X terms of service on this motion but not in the 19 wind-down motion?</p> <p>20 A. I don't know.</p> <p>21 Q. Okay. And if you'd turn to the back of the 22 motion, do you see a certificate of service?</p> <p>23 A. Remind me. That's tab 4 or 3?</p> <p>24 Q. Exhibit 3.</p> <p>25 A. Okay. Yes, I see it.</p>		<p>1 (Plaintiffs' Exhibit 4 was marked for 2 identification.)</p> <p>3 BY MS. RECKLER:</p> <p>4 Q. Can you turn to Exhibit 4.</p> <p>5 A. Okay. I've got it.</p> <p>6 Q. Do you recognize this notice?</p> <p>7 A. Yes.</p> <p>8 Q. And what is this?</p> <p>9 A. I think this is where we noticed a revised 10 order on the motion we were discussing.</p> <p>11 Q. Okay. And can you turn to the bottom of 12 paragraph 2 on page 3 and read aloud the blue text that 13 was added to the revised order.</p> <p>14 A. Yes. "Notwithstanding the foregoing, this 15 order does not purport to grant property rights to the 16 purchaser beyond that which is actually owned by the 17 Chapter 7 Jones estate, or divest authority in the 18 trustee to sell assets which are not owned by the 19 Chapter 7 Jones estate; and consistent with the sale 20 order and this order, the trustee shall not warrant any 21 title to any social media accounts, nor shall any 22 damages incurred by the acquisition and use by any 23 purchaser of the social media accounts found to be void, 24 voidable or without legal binding rights be indemnified 25 by the trustee."</p>	
17:02:10-17:03:32	Page 266	17:05:01-17:06:11	Page 268
<p>1 Q. And was X Corp. served with this motion?</p> <p>2 A. I don't see them on the certificate of service 3 list.</p> <p>4 Q. Will you take my word that X Corp. received a 5 copy of this motion but not the wind-down motion?</p> <p>6 A. Yeah. I have no reason to doubt you.</p> <p>7 Q. Do you know why X Corp. would have received one 8 motion but not the other motion?</p> <p>9 A. I think at some point counsel for X entered an 10 appearance; and then you would have started getting 11 electronic notice of docket entries, even if you weren't 12 on the certificate of service. That might be.</p> <p>13 Q. Okay. But that would have only occur -- strike 14 that question.</p> <p>15 Mr. Jones objected to the motion to sell 16 the intellectual property, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Am I correct that no order has been entered on 19 that motion?</p> <p>20 A. That's right.</p> <p>21 Q. And, in fact, isn't it correct that the 22 bankruptcy court held a hearing on that motion and 23 deferred ruling on the issue of ownership regarding the 24 X accounts?</p> <p>25 A. Yes.</p>		<p>1 Q. Okay. Setting the documents aside, are you 2 generally aware of what X is?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have an account on X of your own?</p> <p>5 A. No.</p> <p>6 Q. Have you ever posted on X?</p> <p>7 A. No.</p> <p>8 Q. Have you ever seen the Infowars X account or 9 any Free Speech Systems X account?</p> <p>10 A. No.</p> <p>11 Q. Do you have any familiarity with the content 12 posted on the Infowars X account?</p> <p>13 A. Some, yes.</p> <p>14 (Plaintiffs' Exhibit 6 was marked for 15 identification.)</p> <p>16 BY MS. RECKLER:</p> <p>17 Q. Can you turn to Exhibit 6.</p> <p>18 A. Okay.</p> <p>19 Q. Do you recognize this document?</p> <p>20 A. Yes.</p> <p>21 Q. And what is this document?</p> <p>22 A. I think this is the X revised terms of service.</p> <p>23 Q. Okay. And have you read this before?</p> <p>24 A. No.</p> <p>25 Q. Have you read any X terms of service?</p>	

17:06:15-17:07:30	Page 269	17:09:09-17:10:30	Page 271
<p>1 A. I read the one we discussed previously.</p> <p>2 Q. Okay. Can you turn to page 4 of Exhibit 6.</p> <p>3 A. All right.</p> <p>4 Q. Do you see the sentence that says, "By using</p> <p>5 these services, you agree to be bound by these terms"?</p> <p>6 A. I'm sure it's there.</p> <p>7 Q. The last sentence of the first paragraph.</p> <p>8 A. Which number section is it? I think I'm on the wrong page.</p> <p>10 Q. It says -- at the top of the page it says "X</p> <p>11 Terms of Service. If you live outside the European</p> <p>12 Union, EFTA States, or the United Kingdom, including if</p> <p>13 you live in the United States."</p> <p>14 A. Okay. Now I see that. All right.</p> <p>15 Q. And do you see the sentence at the end of the</p> <p>16 first full paragraph that says, "By using these services</p> <p>17 you agree to be bound by these terms"?</p> <p>18 A. I see that, yes.</p> <p>19 Q. Okay. Are you aware of whether the X accounts</p> <p>20 have been used after November 15th?</p> <p>21 A. No.</p> <p>22 Q. Okay. I think your previous testimony was you</p> <p>23 thought it was fairly likely that they had been used in</p> <p>24 the last week.</p> <p>25 A. Yeah. I don't know for sure but it could be.</p>	<p>1 Q. Did any bidder ask questions about the X</p> <p>2 accounts?</p> <p>3 A. Not that I know of personally.</p> <p>4 Q. Are you aware of any bidder conducting</p> <p>5 diligence specifically related to the X accounts?</p> <p>6 A. At what time?</p> <p>7 Q. Prior to the conclusion of the auction.</p> <p>8 A. No.</p> <p>9 Q. Did any bidder assign a specific value to any</p> <p>10 of the X accounts, again, prior to the conclusion of the</p> <p>11 auction?</p> <p>12 A. No, I don't think so.</p> <p>13 Q. Do you recall any discussion with any bidder</p> <p>14 about any of the X accounts prior to the conclusion of</p> <p>15 the auction?</p> <p>16 A. That I was in personally, no.</p> <p>17 Q. Did your advisors or colleagues tell you of any</p> <p>18 conversations that they had about the X accounts?</p> <p>19 A. No.</p> <p>20 Q. Do your advisors and colleagues typically</p> <p>21 report to you or tell you in your capacity as the</p> <p>22 trustee of any meaningful conversations about the estate</p> <p>23 assets?</p> <p>24 A. Yes.</p> <p>25 Q. So you would have expected them to report a</p>		
17:07:34-17:09:08	Page 270	17:10:33-17:12:24	Page 272
<p>1 It seems likely.</p> <p>2 Q. Okay. So by continuing to use the X accounts,</p> <p>3 the debtor has agreed -- excuse me, the trustee has</p> <p>4 agreed to be bound to the new terms of the service,</p> <p>5 correct?</p> <p>6 A. That's what that sentence says, yes.</p> <p>7 Q. Okay. And if you turn to page 9 --</p> <p>8 A. I haven't got page numbers, so if you could tell me the heading of the section.</p> <p>10 Q. Yeah, fair enough. It says "Your License to</p> <p>11 Use the Services."</p> <p>12 A. Okay. I'm there.</p> <p>13 Q. Do you want to take a second to read those two</p> <p>14 paragraphs to yourself.</p> <p>15 A. Yes, please.</p> <p>16 Okay. I've seen it.</p> <p>17 Q. Okay. Under the terms of service X is granting</p> <p>18 the user a license to use the X software and name. Is</p> <p>19 that correct?</p> <p>20 A. That's how I understand it, yes.</p> <p>21 Q. Okay. And turning very briefly now to the</p> <p>22 auction, when the auction was conducted, were you aware</p> <p>23 that the bankruptcy court had not yet ruled on whether</p> <p>24 the X accounts were estate assets available for sale?</p> <p>25 A. Yes.</p>	<p>1 meaningful conversation about the auction and assets</p> <p>2 reported to be sold as part of that process?</p> <p>3 A. Yes.</p> <p>4 Q. So based on what you've said, would it be fair</p> <p>5 to say that neither bidder said anything about being</p> <p>6 unwilling to purchase the assets if it could not get the</p> <p>7 X accounts?</p> <p>8 A. Yeah. I think that's right.</p> <p>9 Q. When you conducted the auction, did you</p> <p>10 understand that you might be trying to sell something to</p> <p>11 which you did not have -- the estate did not have</p> <p>12 ownership?</p> <p>13 A. I think that's a possibility, yes.</p> <p>14 Q. If you'll give me one second, I think I</p> <p>15 actually might be done.</p> <p>16 I actually have one or two last questions.</p> <p>17 I'm going to ask my colleague, Mr. Harris, to share his</p> <p>18 screen for an exhibit I don't have printed out,</p> <p>19 unfortunately.</p> <p>20 THE VIDEOGRAPHER: We do not have a Zoom</p> <p>21 laptop up there for him to see any share screen.</p> <p>22 THE WITNESS: I haven't got a screen.</p> <p>23 Maybe you could e-mail it to Josh?</p> <p>24 BY MS. RECKLER:</p> <p>25 Q. Sure.</p>		

17:12:26-17:15:23	Page 273	17:16:43-17:17:23	Page 275
<p>1 A. What is it? We might already have it somewhere.</p> <p>3 Q. No. Actually, this is something I don't think you-all have. All right. We will e-mail them to you quickly.</p> <p>6 MR. WOLFSHOHL: Is this coming from Chris, Caroline?</p> <p>8 MS. RECKLER: Yep.</p> <p>9 MR. WOLFSHOHL: I think I just got it.</p> <p>10 Which one?</p> <p>11 MS. RECKLER: Could you just pull each one up. I have two questions about each. This will be very quick.</p> <p>14 MR. WOLFSHOHL: Here's the first one.</p> <p>15 A. Okay. I've got it.</p> <p>16 (Plaintiffs' Exhibit 7 was marked for identification.)</p> <p>18 BY MS. RECKLER:</p> <p>19 Q. Can you describe this post.</p> <p>20 A. Okay. It says, "Canada will strengthen border security."</p> <p>22 Q. Yes. Is it fair to say that that is a post on the Infowars X handle?</p> <p>24 A. Yeah. That's what it looks like.</p> <p>25 Q. And can you just look towards the bottom.</p>		<p>1 Q. Yep.</p> <p>2 (Plaintiffs' Exhibit 9 was marked for identification.)</p> <p>4 A. All right. Okay. I've got it.</p> <p>5 BY MS. RECKLER:</p> <p>6 Q. And is that a post on an X account, The War Room's X account -- excuse me, The War Room show X account?</p> <p>9 A. Yes. I see "War Room Show." Yes, I see that.</p> <p>10 Q. And that's like a post on an X account?</p> <p>11 A. Yeah. That's what it looks like.</p> <p>12 Q. Okay. And at the bottom could you just tell me the date and time again, please.</p> <p>14 A. 2:32 p.m. on December 4th.</p> <p>15 Q. Thank you.</p> <p>16 MS. RECKLER: I have no further questions.</p> <p>17 MR. WOLFSHOHL: I have a couple.</p>	
17:15:25-17:16:41	Page 274	17:17:24-17:18:30	Page 276
<p>1 There's a time and a date.</p> <p>2 Can you tell me what the time and the date is. It's right under the picture.</p> <p>4 A. I'm seeing a couple of them here. And there's things popping up on Windows, so give me just a second.</p> <p>6 Q. Sure.</p> <p>7 A. Yeah, I see it. It looks like it's just after midnight on the 3rd of December.</p> <p>9 Q. Okay. And if we could pull up the next document.</p> <p>11 A. Exhibit J?</p> <p>12 Q. Yeah.</p> <p>13 (Plaintiffs' Exhibit 8 was marked for identification.)</p> <p>15 A. All right. Scrolling.</p> <p>16 BY MS. RECKLER:</p> <p>17 Q. Is that a post on the Infowars X account?</p> <p>18 A. Yes. That's what it looks like.</p> <p>19 Q. Okay. If you could scroll a little bit down, there's a white box. Underneath there it says a date and a time. Could you tell me what the date and time is.</p> <p>23 A. 1:01 p.m. on November 25th.</p> <p>24 Q. Okay. And if you could pull the third one.</p> <p>25 A. Sure. Exhibit K?</p>		<p>1 EXAMINATION</p> <p>2 QUESTIONS BY MR. WOLFSHOHL:</p> <p>3 Q. I'm Joshua Wolfshohl for the trustee.</p> <p>4 Mr. Murray, you discussed with</p> <p>5 Mr. Broocks, and I think Mr. Cicack, the conversation that you testified occurred right before the filing of</p> <p>6 the motion with the Connecticut families regarding your interpretation of the distributable proceeds waiver,</p> <p>7 right?</p> <p>10 A. Yeah. That phone call that Kyle was on, yeah.</p> <p>11 Q. Yeah. And in that conversation did you agree to hold off on filing the motion until you got confirmation that they were in agreement with how you were characterizing it?</p> <p>15 A. Yes.</p> <p>16 Q. Did you get that confirmation before filing the motion?</p> <p>18 A. Yes.</p> <p>19 Q. Has that been incorporated into the proposed order yet?</p> <p>21 A. No.</p> <p>22 Q. Okay. Have there been discussions about revising the order to conform with what you put in the motion?</p> <p>25 A. Yes.</p>	

17:18:31-17:19:34	Page 277	17:20:43-17:22:59	Page 279
<p>1 Q. Okay.</p> <p>2 MR. WOLFSHOHL: No further questions.</p> <p>3 RE-EXAMINATION</p> <p>4 QUESTIONS BY MR. CICACK:</p> <p>5 Q. So the conversation that you had, you said that</p> <p>6 you told Mr. Kimpler that you would hold off filing the</p> <p>7 motion until there was an agreement?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 A. On the motion.</p> <p>11 Q. The agreement being on how the distributable</p> <p>12 proceeds waiver worked?</p> <p>13 A. Right. We shared a version of the sale motion</p> <p>14 that explained what my reasoning was on that.</p> <p>15 Q. Right.</p> <p>16 A. But we weren't going to file the sale motion</p> <p>17 until we had agreement on the sale motion with the joint</p> <p>18 bidders.</p> <p>19 Q. Agreement as to what? As to your</p> <p>20 interpretation of the DPW?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. But didn't you have -- wasn't there a</p> <p>23 sale order attached to the motion?</p> <p>24 A. There was.</p> <p>25 Q. Okay. And the sale order that was attached to</p>	<p>1 A. I wasn't going to file the motion until the</p> <p>2 joint bidders agreed to the draft of the motion.</p> <p>3 Q. Which included your understanding of the</p> <p>4 7 million --</p> <p>5 A. Yes, exactly. My explanation of what I</p> <p>6 interpret their bid as being, yes.</p> <p>7 Q. So when you filed it, you had reached an</p> <p>8 agreement, you're saying, on November 18th. By that</p> <p>9 date you had reached an agreement that they had</p> <p>10 capitulated to your understanding, in other words?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And you're saying, if we look at the</p> <p>13 final tab 8. I'd ask you to go there real quick.</p> <p>14 A. Yep. I'm there.</p> <p>15 Q. Now, this order, which is 915-8, look on</p> <p>16 paragraph red No. 5 of page 5. Is this the provision</p> <p>17 that you're saying was a mistake?</p> <p>18 A. Yes.</p> <p>19 Q. Read it out loud to us.</p> <p>20 A. "The consideration to be provided by the</p> <p>21 purchaser and the Connecticut families consists of (1)</p> <p>22 cash consideration in the amount of \$1,750,000, the cash</p> <p>23 purchase price, and (2) a commitment by the Connecticut</p> <p>24 families to forego the distributable proceeds waiver</p> <p>25 amount as defined below and the assignment of the</p>		
17:19:38-17:20:41	Page 278	17:23:03-17:24:17	Page 280
<p>1 the motion includes the Connecticut families'</p> <p>2 interpretation, not yours. Isn't that right?</p> <p>3 A. That's right. It does.</p> <p>4 Q. Okay.</p> <p>5 MR. CICACK: No further questions.</p> <p>6 RE-EXAMINATION</p> <p>7 QUESTIONS BY MR. BROOCKS:</p> <p>8 Q. Why is that?</p> <p>9 A. It's an oversight.</p> <p>10 Q. On whose part?</p> <p>11 A. I guess mine because I reviewed it before it</p> <p>12 was filed. I hadn't noticed that that had not been</p> <p>13 updated.</p> <p>14 Q. So going back to 191 -- if we can pull it back</p> <p>15 up real quick.</p> <p>16 This is the motion -- 191 is the motion</p> <p>17 you filed in the order referring to the sale, right?</p> <p>18 A. Yeah. I don't know which exhibit you're</p> <p>19 referring to.</p> <p>20 Q. It's the notebook that I've got, 191. That's</p> <p>21 right.</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. Now, I want to make sure. You said that</p> <p>24 you agreed not to file this until you had an</p> <p>25 understanding of what?</p>	<p>1 distributable proceeds waiver amount to the trustee for</p> <p>2 the benefit of all other unsecured creditors of FSS.</p> <p>3 The distributable proceeds waiver amount means the</p> <p>4 amount necessary for all other holders of allowed</p> <p>5 unsecured creditors of FSS to recover \$100,000 more in</p> <p>6 the aggregate than they would recover from the sale of</p> <p>7 the purchased assets to the backup bidder up to</p> <p>8 100 percent of the Connecticut families' entitlement to</p> <p>9 the cash purchase price."</p> <p>10 Q. Okay. And you're saying that's wrong?</p> <p>11 A. That's right.</p> <p>12 Q. That's right; that's wrong?</p> <p>13 A. Right. That is right. That is -- that's</p> <p>14 right; that's wrong.</p> <p>15 Q. Well, this is not a -- I mean, this is not a</p> <p>16 one paragraph. This is like a 22-page order.</p> <p>17 A. Yeah, it is.</p> <p>18 Q. How did it happen here? How did that happen?</p> <p>19 A. I mean, I can only speculate. I think it's</p> <p>20 because we -- my counsel and I were the primary drafters</p> <p>21 of the motion, which expressed my interpretation and my</p> <p>22 understanding of the bid. And the sale order was</p> <p>23 drafted in the first instance by the joint bidders. And</p> <p>24 this is just a provision that I overlooked and didn't</p> <p>25 realize it was different from my interpretation.</p>		

17:24:27-17:25:32	Page 281	17:26:37-17:27:38	Page 283
<p>1 MR. CICACK: That is unadulterated 2 bologna. This whole thing is ridiculous.</p> <p>3 BY MR. BROOCKS:</p> <p>4 Q. I'm just trying to follow what you're saying. 5 You're saying that the order was drafted 6 by the Connecticut plaintiffs?</p> <p>7 A. By the joint bidders.</p> <p>8 MR. WOLFSHOHL: Sale orders are always 9 drafted by the buyer.</p> <p>10 BY MR. BROOCKS:</p> <p>11 Q. Now, the motion itself was drafted by your 12 lawyers, though, right?</p> <p>13 A. Yes.</p> <p>14 Q. That's 190 at 915 base. 15 Now, I want to ask you to take a look with 16 me -- just before I do that, you're saying that the 17 error was made because the Connecticut parties, the 18 joint bidders, drafted this, not you-all?</p> <p>19 A. Yes.</p> <p>20 Q. And you-all just weren't careful enough to read 21 it and catch it. 22 When did you catch it?</p> <p>23 A. Oh, sometime after it was filed.</p> <p>24 Q. Well, like yesterday?</p> <p>25 A. No, before that; but I don't remember when.</p>		<p>1 A. I don't know.</p> <p>2 BY MR. BROOCKS:</p> <p>3 Q. Let's read it together.</p> <p>4 MR. WOLFSHOHL: You know how that works. 5 It gets saved on somebody's system, and it gets filed.</p> <p>6 MR. BROOCKS: I'm going to let you explain 7 that to me more carefully.</p> <p>8 BY MR. BROOCKS:</p> <p>9 Q. But if you would let me, the number 15668356 on 10 your motion --</p> <p>11 A. Yeah.</p> <p>12 Q. -- is the same footer number that's on the 13 proposed formal order, right?</p> <p>14 A. No. It's a different order.</p> <p>15 Q. It's 15668021 versus 15668356?</p> <p>16 A. Right.</p> <p>17 Q. Okay. And so does that indicate to you that 18 the same law firm prepared it?</p> <p>19 A. It indicates to me that the version that was 20 filed was most recently saved or stamped by the same law 21 firm that did both documents. It tells me nothing about 22 who drafted the first draft of that document.</p> <p>23 MR. BROOCKS: Josh, you were saying I knew 24 or should have -- what are you saying I got wrong? I'm 25 just curious. I don't understand what you're saying.</p>	
17:25:34-17:26:36	Page 282	17:27:39-17:28:30	Page 284
<p>1 Q. And you can't give me like -- again, I'm trying 2 to figure out within the last 24 hours or was it --</p> <p>3 A. No. It was sometime before my deposition was 4 first set. I think I noticed it when I was prepping for 5 that original date we had before we moved it.</p> <p>6 Q. Okay.</p> <p>7 A. So maybe over a week ago.</p> <p>8 Q. And so you'll notice on the bottom left of that 9 document, what's that little number right there that 10 says "1566802"? What is that number?</p> <p>11 A. I think it's a document ID stamp.</p> <p>12 Q. Have you ever seen one before?</p> <p>13 A. Yes.</p> <p>14 Q. What do they do?</p> <p>15 A. It's usually for, like, iManage or some 16 document management program that law firms use. And it 17 puts a footer on there so that you can go in the system 18 and find the document again if it gets separated from 19 the rest of it.</p> <p>20 Q. And you're saying that the motion itself, the 21 body of 915, was drafted by your lawyers, right?</p> <p>22 A. Yeah.</p> <p>23 Q. So is that the same number on that bottom left 24 of that as it was on the --</p> <p>25 MR. WOLFSHOHL: Come on.</p>		<p>1 MR. WOLFSHOHL: When you get something 2 from someone else and you save it on your system, it 3 puts a file stamp of your iManage number on the 4 document. And we filed it. They didn't file it. We 5 filed it, but they prepared it. That's what he's 6 saying.</p> <p>7 MR. BROOCKS: And I'm not -- this ain't 8 your deposition.</p> <p>9 MR. WOLFSHOHL: I understand.</p> <p>10 MR. BROOCKS: But I wanted to make sure 11 I'm clear on this. You're saying that this is their 12 number?</p> <p>13 MR. WOLFSHOHL: No. It's our number. It 14 got saved on our system because we ultimately filed the 15 motion with all the attachments, and everything got 16 saved on our system. But we were not the scriveners of 17 the order.</p> <p>18 MR. BROOCKS: Well, look, I accept 19 everything you've said; but it would be a real simple 20 matter if you just got the transmittal e-mail that they 21 sent it to you on. That would be problem solved.</p> <p>22 MR. WOLFSHOHL: I can do it. Not a 23 problem. I'll do that.</p> <p>24 MR. BROOCKS: Okay.</p> <p>25 MR. WOLFSHOHL: I'll give you the e-mail</p>	

17:28:31-17:29:40	Page 285	17:30:55-17:31:41	Page 287
<p>1 where it lays out who's doing what. Literally it says 2 that.</p> <p>3 BY MR. BROOCKS:</p> <p>4 Q. Let me go back to this and make sure I'm clear 5 on this, Chris.</p> <p>6 So your testimony is, is when the motion 7 itself, 915, is drafted, that the agreement had been 8 reached between you and the Connecticut plaintiffs and 9 the joint bidders as to what the consideration was going 10 to be stated as.</p> <p>11 That agreement was reached?</p> <p>12 A. So I'm not sure it was reached -- it was 13 reached by the time it was filed. I'm not sure it was 14 reached by the time the motion was first drafted.</p> <p>15 Q. By the time it was filed?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. So by the time it was filed, you know, 18 on November 18th, in your mind there was no 19 misunderstanding that the joint bidders understood that 20 it was -- the \$7 million number was the waiver amount, 21 nothing below that?</p> <p>22 A. Right. They agreed to my interpretation by the 23 time this was filed.</p> <p>24 Q. And, yet, they sent -- I'm not saying I agree 25 or disagree. I'm just trying to get it nailed down.</p>		<p>1 the first date for my depo.</p> <p>2 Q. The first date of your depo. What are you 3 talking about? The one we're having right now?</p> <p>4 A. Yeah. This one was rescheduled. It had been 5 set for a week or whatever the earlier date was.</p> <p>6 Q. Last week, in other words?</p> <p>7 A. I think so. I don't remember what day it was.</p> <p>8 Q. And did you pick up the phone and call the 9 joint bidders and say, Hey, guys, we've got a problem 10 here, you know, wrong order?</p> <p>11 A. I didn't call them.</p> <p>12 Q. Who did?</p> <p>13 A. I imagine my counsel did.</p> <p>14 Q. You say you imagine. Do you know he did?</p> <p>15 A. No.</p> <p>16 Q. Well, why do you think anybody made a phone 17 call?</p> <p>18 A. Because we noticed an error. We knew we'd have 19 to get a revised sale order, and I imagine that 20 discussion's been happening.</p> <p>21 Q. I don't want you to use the word "I imagine." 22 I don't like that because I'm not sure what that means. 23 Do you know, did you tell your lawyer, 24 We've got to call these guys and tell them, Hey, we've 25 got a bad order form in here?</p>	
17:29:42-17:30:54	Page 286	17:31:43-17:32:48	Page 288
<p>1 This document that we're looking at, the 2 proposed form order, which says something totally 3 different, was sent earlier by the joint bidders for you 4 to attach?</p> <p>5 A. Yeah. I don't know when the first draft came 6 over. We filed it with the motion.</p> <p>7 Q. But clearly your testimony is they sent it -- 8 the joint bidders sent you this form of order?</p> <p>9 A. Well, I said they drafted it in the first 10 instance. It went through different rounds of 11 revisions. I don't know who did the final revisions on 12 it but ...</p> <p>13 Q. Surely it wouldn't be your law firm if they got 14 it from somebody else?</p> <p>15 A. No. I think it was. I think we just missed 16 this.</p> <p>17 Q. And the joint bidders submitted something to 18 you and saw it got filed, and your testimony is that 19 they knew that it was wrong. Is that your testimony?</p> <p>20 A. I imagine they missed it, too. I don't know.</p> <p>21 Q. That's a pretty big miss, isn't it?</p> <p>22 A. I'm not sure. Yeah. I mean, it's incorrect. 23 It's not what my interpretation was.</p> <p>24 Q. You're saying you realized it when?</p> <p>25 A. I think I was preparing for it whenever we had</p>		<p>1 A. I said, We need to fix the order.</p> <p>2 Q. Did you instruct anybody to call the joint 3 bidders and tell them there was a problem?</p> <p>4 A. No.</p> <p>5 Q. Has that call taken place to your knowledge?</p> <p>6 A. I believe so.</p> <p>7 Q. Why do you believe that?</p> <p>8 A. Because that's what I would expect would happen 9 to address this error.</p> <p>10 Q. Okay.</p> <p>11 MR. BROOCKS: Thank you.</p> <p>12 MR. CICACK: John, I've got a couple more 13 questions.</p> <p>14 MR. BROOCKS: I've got no more.</p> <p>15 FURTHER EXAMINATION QUESTIONS BY MR. CICACK:</p> <p>17 Q. So you filed this on November 18th of 2024, 18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you noticed the mistake about a week ago?</p> <p>21 A. I think so, yeah.</p> <p>22 Q. Okay. And had anybody representing the 23 Connecticut parents called you or communicated to you to 24 let you know about this mistake?</p> <p>25 A. Me personally? No.</p>	

17:32:49-17:33:58	Page 289	17:35:21-17:36:11	Page 291
<p>1 Q. Okay. Do you know if they called your counsel?</p> <p>2 A. I do not know.</p> <p>3 Q. Okay. So your testimony is that you discovered</p> <p>4 this mistake getting ready for your deposition?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And looking at it, tell me what the</p> <p>7 mistake is.</p> <p>8 Is it just this one sentence that says,</p> <p>9 "The distributable proceeds waiver amount means the</p> <p>10 amount necessary for all other holders of allowed</p> <p>11 unsecured creditors of FSS to recover 100,000 more in</p> <p>12 the aggregate than they would recover from the sale of</p> <p>13 the purchased assets to the backup bidder, up to a</p> <p>14 hundred percent of the Connecticut families' entitlement</p> <p>15 to the cash purchase price," is that the only mistake,</p> <p>16 that sentence?</p> <p>17 A. That's the only one that comes to mind.</p> <p>18 Q. Okay. And do you have an agreement with the</p> <p>19 Connecticut parents what this is going to say after the</p> <p>20 change is made?</p> <p>21 A. You mean the exact language?</p> <p>22 Q. Yeah.</p> <p>23 A. I don't know.</p> <p>24 Q. Where it says, "The distributable proceeds</p> <p>25 waiver amount means," do you have an agreement on what</p>	<p>1 responsible for drafting this order?</p> <p>2 A. I don't know.</p> <p>3 Q. Don't you think that we should all be able to</p> <p>4 depose that person to figure out exactly what they</p> <p>5 intended when they drafted this sale order?</p> <p>6 MR. PATERSON: Objection to form.</p> <p>7 BY MR. CICACK:</p> <p>8 Q. You can answer.</p> <p>9 A. It's not up to me.</p> <p>10 Q. I'm asking you, don't you think that we should</p> <p>11 have the ability and the right to talk to the person who</p> <p>12 actually drafted it?</p> <p>13 A. No.</p> <p>14 Q. Why not?</p> <p>15 MR. PATERSON: Objection to form.</p> <p>16 A. Because it doesn't matter who drafted it; it</p> <p>17 matters what the order that we proposed says, and it</p> <p>18 matters what the judge signs.</p> <p>19 BY MR. CICACK:</p> <p>20 Q. Well, you don't think it matters what they</p> <p>21 intended when they made the bid?</p> <p>22 MR. PATERSON: Objection to form.</p> <p>23 A. I think what our agreement is is what matters.</p> <p>24 BY MR. CICACK:</p> <p>25 Q. Well, the fact of the matter is when you</p>		
17:34:01-17:35:20	Page 290	17:36:14-17:37:26	Page 292
<p>1 is going to be put there in terms of what it means?</p> <p>2 A. I think we agree on what it means and what it</p> <p>3 should say. I haven't seen the exact language.</p> <p>4 Q. Tell me what the agreement is of what it means.</p> <p>5 A. It would be consistent with what's in the sale</p> <p>6 motion.</p> <p>7 Q. I can't even understand what's in the sale</p> <p>8 motion. So why don't you explain it to me.</p> <p>9 Tell me -- you're sitting here right</p> <p>10 now -- your understanding what goes in there. What</p> <p>11 would you put in there?</p> <p>12 A. It's the amount that gives the non-Connecticut</p> <p>13 creditors the amount they would have received had the</p> <p>14 purchase price been in \$7 million cash.</p> <p>15 Q. The alternative price, the other qualified</p> <p>16 bidder?</p> <p>17 A. No. Well, right. If the other one were</p> <p>18 7 million, right.</p> <p>19 Q. Okay. Now, this is pretty good evidence of</p> <p>20 what the Connecticut families intended in their bid,</p> <p>21 isn't it?</p> <p>22 MR. WOLFSHOHL: Objection, form.</p> <p>23 BY MR. CICACK:</p> <p>24 Q. Okay. We'll get to that.</p> <p>25 Who for the Connecticut families was</p>	<p>1 accepted their bid, you had a different understanding</p> <p>2 than they did as to what the distributable proceeds</p> <p>3 waiver meant?</p> <p>4 A. Yeah. That's possible, yeah.</p> <p>5 Q. No. It's not possible; it's the truth, right?</p> <p>6 You had a different understanding than</p> <p>7 they did on what the distributable proceeds waiver</p> <p>8 amount means, correct, when you accepted their bid?</p> <p>9 A. I had a different understanding than what is</p> <p>10 reflected in the sale order. I don't know what was in</p> <p>11 their mind at the time.</p> <p>12 Q. It's pretty good evidence, right here, right?</p> <p>13 MR. PATERSON: Objection, form.</p> <p>14 A. I don't know.</p> <p>15 BY MR. CICACK:</p> <p>16 Q. You don't think this is good evidence? It</p> <p>17 tracks exactly what's in their letter.</p> <p>18 A. It's some evidence of what was in their mind,</p> <p>19 yes.</p> <p>20 Q. Okay. So you know that, as Mr. Broocks went</p> <p>21 through earlier, the two of you -- at the time that you</p> <p>22 accepted their offer and filed the Notice of Successful</p> <p>23 Bidder, you and the Connecticut families did not have a</p> <p>24 meeting of the mind as to what this "distributable</p> <p>25 proceeds waiver amount" meant?</p>		

17:37:29-17:38:21	Page 293	17:39:20-17:40:25	Page 295
<p>1 MR. WOLFSHOHL: Objection to form.</p> <p>2 A. Yeah. I disagree with that characterization.</p> <p>3 BY MR. CICACK:</p> <p>4 Q. Okay. Well, you thought it meant something</p> <p>5 different than what's in the sale order, though, right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 MR. CICACK: No further questions.</p> <p>9 FURTHER EXAMINATION</p> <p>10 QUESTIONS BY MR. BROOCKS:</p> <p>11 Q. I just asked you just a minute ago, "When you</p> <p>12 recognized this problem, did you pick up the phone and</p> <p>13 call?</p> <p>14 "No.</p> <p>15 "Did anybody call?</p> <p>16 "No. I assumed -- I imagined calls would</p> <p>17 have taken place."</p> <p>18 I said, "Do you know anybody that called?</p> <p>19 "No."</p> <p>20 Do you remember just telling me that?</p> <p>21 A. I think that's roughly what I said.</p> <p>22 Q. Yeah. I mean, remember you used the word</p> <p>23 "imagined"? I said I don't like that word.</p> <p>24 Should I go back and read it to you?</p> <p>25 A. What's your question?</p>		<p>1 want you to tell me what you know.</p> <p>2 And I said, I don't know who called who.</p> <p>3 Did somebody call somebody --</p> <p>4 Q. You said "I imagine so."</p> <p>5 A. You know what? You're right.</p> <p>6 Q. So now you're saying that Mr. Wolfshohl told</p> <p>7 you -- and that's fine. If that's what he told you, I'm</p> <p>8 not disputing that that's what he said. But that's your</p> <p>9 testimony today, is that Mr. Wolfshohl told you he'd</p> <p>10 called and got it straightened out?</p> <p>11 A. No. He told me it was resolved. He didn't</p> <p>12 tell me who he called or if he called or if somebody</p> <p>13 else called. I imagine there was a phone call.</p> <p>14 All I know is that there's an agreement</p> <p>15 between us and the joint bidders that the sale order</p> <p>16 needs to be revised to reflect our agreement.</p> <p>17 Q. And you don't have anything in writing that you</p> <p>18 can point us to at all that would substantiate that?</p> <p>19 A. I don't think so, not as I sit here.</p> <p>20 Q. All right. Thank you.</p> <p>21 MR. PATERSON: If no one has any other</p> <p>22 questions, this is Paul Paterson of Paul Weiss for the</p> <p>23 Connecticut families. I'll be brief. I just have a</p> <p>24 couple of questions.</p> <p>25</p>	
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<p>1 Q. Your question is you just told him that you-all</p> <p>2 got on the phone and talked to these people and got it</p> <p>3 straightened out. You didn't talk to anybody.</p> <p>4 A. I didn't talk to anybody, no.</p> <p>5 Q. Nobody, to your knowledge, talked to anybody?</p> <p>6 MR. WOLFSHOHL: He just asked questions</p> <p>7 about the order.</p> <p>8 BY MR. BROOCKS:</p> <p>9 Q. Nobody, to your knowledge, talked to anybody on</p> <p>10 the joint bidders' side to straighten anything out.</p> <p>11 Isn't that what you just told me before I was --</p> <p>12 A. No.</p> <p>13 Q. You didn't tell me that? Who told -- okay.</p> <p>14 Strike that.</p> <p>15 Who is it, your sworn testimony, on your</p> <p>16 side that called anybody on the joint bidders' side to</p> <p>17 fix this problem? Who made the call?</p> <p>18 A. I'm going to answer your question this way. My</p> <p>19 counsel told me that there was an agreement. My counsel</p> <p>20 told me that there was an acknowledgment that the sale</p> <p>21 order was wrong and that it would get fixed.</p> <p>22 I surmised from that that there was a</p> <p>23 phone call between someone. And when you asked me to my</p> <p>24 knowledge was there a phone call, I said, I think so.</p> <p>25 And you said, Oh, I don't want that. I</p>		<p>1 EXAMINATION</p> <p>2 QUESTIONS BY MR. PATERSON:</p> <p>3 Q. You testified a few minutes ago about different</p> <p>4 interpretations of the successful bidders. Do you</p> <p>5 recall that testimony?</p> <p>6 A. Yes.</p> <p>7 Q. And under both of those interpretations, in</p> <p>8 your business judgment, was the successful bidders' bid</p> <p>9 preferable to the First United bid?</p> <p>10 A. Yes.</p> <p>11 MR. PATERSON: I have no further</p> <p>12 questions.</p> <p>13 MS. DRENGA: This is Deanna Drenga on</p> <p>14 behalf of the Texas plaintiffs. We just want to note</p> <p>15 that we reserve our questions for the hearing. Thank</p> <p>16 you.</p> <p>17 THE VIDEOGRAPHER: Are we done?</p> <p>18 The time is 5:40 p.m., and we are off the</p> <p>19 record.</p> <p>20 (Proceedings concluded at 5:40 a.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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1	CHANGES AND SIGNATURE	1 IN THE UNITED STATES BANKRUPTCY COURT 2 FOR THE SOUTHERN DISTRICT OF TEXAS 3 HOUSTON DIVISION
2	WITNESS NAME: CHRISTOPHER MURRAY	3 IN RE:) 4 ALEXANDER E. JONES) CHAPTER 11 5 Debtor) CASE NO. 22-33553
3	DATE OF DEPOSITION: December 5, 2024	6 REPORTER'S CERTIFICATE 7 ORAL DEPOSITION OF CHRISTOPHER MURRAY 7 December 5, 2024
4	PAGE LINE CHANGE	8 I, Melinda Barre, Certified Shorthand Reporter in 9 and for the State of Texas, hereby certify to the 10 following:
5	REASON	11 That the witness, CHRISTOPHER MURRAY, was duly sworn 12 by the officer and that the transcript of the oral 13 deposition is a true record of the testimony given by 14 the witness;
6		15 That the deposition transcript was submitted on 16 _____, to the witness or to the 17 attorney for the witness for examination, signature and 18 return to me by _____;
7		19 That pursuant to information given to the 20 deposition officer at the time said testimony was taken, 21 the following includes counsel for all parties of 22 record:
8		23 Mr. Joshua Wolfshohl, Ms. Kenesha L. Starling, 24 and Mr. Michael B. Dearman, attorneys for Chapter 7 Trustee Christopher Murray Mr. Walter J. Cicack, attorney for First United 25 American Companies, LLC
9		Page 298
10	I, CHRISTOPHER MURRAY, have read the foregoing 11 deposition and hereby affix my signature that same is 12 true and correct, except as noted above.	11 Mr. Ha Nguyen, attorney for U.S. Trustee 12 Mr. Ben C. Broocks and Mr. Shelby A. Jordan, 13 attorney for Alexander Jones 14 Ms. Caroline A. Reckler, Mr. Christopher Harris, 15 and Mr. Jonathan J. Weichselbaum, attorneys for X Corp.
12		16 Mr. Paul A. Paterson, Mr. Kyle Kimpler, 17 Ms. Vida Robinson, and Mr. Ryan Chapple, attorneys for Connecticut Plaintiffs 18 Ms. Deanna Drenga and Mr. Niko Letsos, attorneys for Texas Plaintiffs 19 Ms. Paula Brillson, attorney for The Onion
13	CHRISTOPHER MURRAY	20
14	THE STATE OF _____)	21
15	COUNTY OF _____)	22
16	Before me, _____, on this day 17 personally appeared CHRISTOPHER MURRAY, known to me or 18 proved to me on the oath of _____ or through 19 _____ (description of identity card 20 or other document) to be the person whose name is 21 subscribed to the foregoing instrument and acknowledged 22 to me that he/she executed the same for the purpose and 23 consideration therein expressed.	23 I further certify that I am neither counsel for, 24 related to, nor employed by any of the parties or 25 attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.
24	Given under my hand and seal of office on this _____ 25 day of _____, _____.	26 Further certification requirements will be certified to after they have occurred.
26		27 Certified to by me this _____ day of 28 December, 2024.
27		29
28	NOTARY PUBLIC IN AND FOR 29 THE STATE OF _____	30 Melinda Barre Texas CSR 2192 Expiration: 12/31/25 CONTINENTAL COURT REPORTERS, INC. Firm Registration No. 61 Expires: 01/31/2025 Two Riverway Building 2 Riverway, Suite 750 Houston, Texas 77056 (713) 522-5080
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1 FURTHER CERTIFICATION
2 BY COURT REPORTING FIRM

3 The original deposition was/was not returned to the
4 deposition officer on _____;
5 If returned, the attached Changes and Signature page
6 contains any changes and the reasons therefor;
7 If returned, the original deposition was delivered
8 to Mr. Walter J. Cicack, Custodial Attorney;
9 That \$ _____ is the deposition officer's charges
10 to First United American Companies, LLC for preparing
11 the original deposition transcript and any copies of
12 exhibits;

13 That a copy of this certificate was served on all
14 parties shown herein.

15 Certified to by me this _____ day of
16 _____, _____.

17

18

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